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East Jordan Irrigation Company, Provo River Water Users' Association, Salt lake City Corporation v. Robert L. Morgan and Payson City Corporation : Brief of Appellant

Utah Supreme Court

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BRIEF
DOCKET NO. 920125

IN THE UTAH SUPREME COURT

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EAST JORDAN IRRIGATION COMPANY, PROVO RIVER WATER USERS' ASSOCIATION, SALT LAKE CITY CORPORATION,

Plaintiffs-Appellants,

v.

ROBERT L. MORGAN, State Engineer of Utah, and PAYSON CITY CORPORATION,

Defendants-Appellees.

Docket No. 920125

Priority No. 16
Expedited Argument
Utah Code Ann. § 73-3-15

BRIEF OF APPELLANTS

Appeal from a Judgment of the Fourth District Court,
Utah County, State of Utah
Honorable Cullen Y. Christensen, Presiding

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STATEMENT OF JURISDICTION

On February 25, 1992, the District Court entered the Final Judgment from which this appeal is taken. No party filed any post-judgment motions. Plaintiffs-Appellants timely filed their Notice of Appeal on February 28, 1992. The Utah Supreme Court has jurisdiction over this appeal pursuant to Utah Code Ann. § 78-2-2(3)(f) (1992).[1/]

ISSUES PRESENTED

1. This is a case of first impression regarding whether, under Utah law and East Jordan Irrigation Company's ("East Jordan's") Articles of Association and East Jordan policy, every owner of a share of stock in the irrigation company has the right to file a change application in the shareholder's name, without the approval and over the objection of the Company, and thereby unilaterally amend the Company policies and procedures and change the Company-owned water rights; and

2. Whether the office of the State Engineer has jurisdiction to approve such an application.

STANDARD OF REVIEW

This matter arose in the District Court under Utah Code Ann. §§ 73-3-14 (1989) and 63-46b-15 (1989) as a de novo review of the State Engineer's decisions approving Payson's change

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[1/] Pursuant to Utah Code Ann. § 73-3-15 (1989), a final order must be entered in this case by August 7, 1993. Therefore, the parties have stipulated to expedited argument. (Stipulation to Expedited Argument dated April 21, 1992.)

application. In determining whether the District Court properly granted summary judgment as a matter of law to the prevailing party, an appellate court gives no deference to the trial court's legal conclusions and reviews those conclusions for correctness. Bonham v. Morgan, 788 P.2d 497, 499 (Utah 1989).

APPLICABLE STATUTES[2]

I. NATURE OF REVIEW

Utah Code Ann. § 73-3-14(1)(a)(1989):

> Any person aggrieved by an order of the state engineer may obtain judicial review by following the procedures and requirements of Chapter 46b, Title 63.

Utah Code Ann. § 63-46b-15(1)(a)(1989):

> The district courts shall have jurisdiction to review by trial de novo all final agency actions resulting from informal adjudicative proceedings . . .

II. GENERAL POWERS & ENABLING AUTHORITY OF THE IRRIGATION COMPANY

Applicable portions of General Corporate Act, Laws of the Territory of Utah, Chap. IV, Compiled Laws of Utah (1874):

> Sec. 1. Whenever any number of persons, not less than six, one-third of whom being residents of this Territory, are desirous of associating themselves together for establishing and conducting any mining, manufacturing, commercial or other industrial pursuit, or the construction or operation of wagon roads, irrigating ditches . . . or any rightful subjects consistent with the Constitution of the United States and the laws of this Territory, and who wish to incorporate for that purpose, may, by complying with the

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[2] The complete text of these statutes is set forth at Addendum F.

> provisions of this act, become a body corporate.
>
> Sec. 2. They shall enter into an agreement in writing signed by each of them, and by at least 4 of their number acknowledged before the probate judge of the county in which they have established or intend to establish their principal place of business, . . .
>
> Sec. 6. The corporation in its name shall have power to make contracts, to sue and be sued . . . to buy, use, sell or dispose of all such real estate as shall be necessary for its general business . . .
>
> Sec. 14. The stock shall be deemed personal property, and may be transferred in such manner as may be provided in the agreement or by-laws.

Applicable portions of Utah Non-Profit Corporation Act, Utah Code Ann. § 16-6-18 to 112 (1992):

> § 20.(1) The provisions of this act relating to domestic corporations shall apply to:
>
> (c) mutual irrigation, canal, ditch, reservoir and water companies and water user associations organized and existing under the laws of the state on the effective date of this act.
>
> § 22. Each non-profit corporation shall have power:
>
> (4) to purchase, take, receive . . . or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated.

III. CHANGE APPLICATION STATUTE

Applicable portions of Utah Code Ann. § 73-3-3 (1989):

> (2)(a) Any person entitled to the use of water may make:

> (i) permanent or temporary changes in the place of diversion;
>
> (ii) permanent or temporary changes in the place of use; and
>
> (iii) permanent or temporary changes in the purpose or use for which the water was originally appropriated.

(2)(b) No change may be made if it impairs any vested right without just compensation.

(4)(a) No change may be made unless the change application is approved by the state engineer.

(5)(a) The state engineer shall follow the same procedures, and the rights and duties of the applicants with respect to applications for permanent changes of point of diversion, place or purpose of use shall be the same, as provided in this title for applications to appropriate water.

(8)(a) Any person holding an approved application for the appropriation of water may either permanently or temporarily change the point of diversion, place or purpose of use.

(b) No change of an approved application affects the priority of the original application, except that no change of point of diversion, place or nature of use set forth in approved application will enlarge the time within which the construction work is to begin or be completed.

Utah Code Ann. § 73-3-16 (1989):

Sixty days before the date set for the proof of appropriation or proof of permanent change to be made, the state engineer shall notify the applicant by certified mail when proof of completion of works and application of the water to beneficial use will be due. On or before the date set for completing such proof in accordance with his application, the applicant shall file proof to the state engineer . . .

Utah Code Ann. § 73-3-17 (1989):

> Upon it being made to appear to the satisfaction of the state engineer that an appropriation or a permanent change of point of diversion, place or nature of use has been perfected in accordance with the application therefore, and that the water appropriated or affected by the change has been put to a beneficial use, as required by Section 73-3-16, he shall issue a certificate, in duplicate, setting forth the name and post office address of the person by whom the water is used, the quantity of water in acre feet or the flow in second feet appropriated, the purpose for which the water is used, the time during which the water is to be used each year, the name of the stream or source of supply from which the water is diverted, the date of the appropriation or change, and . . . completely define the extent and conditions of actual applications of the water to a beneficial use . . . Failure to file proof of appropriation or proof of change of the water on or before the date set therefor shall cause the application to lapse.

IV. APPROPRIATION STATUTE

Utah Code Ann. § 73-1-1 (1989):

> All waters in this State, whether above or under the ground, are hereby declared to be the property of the public, subject to all existing rights to the use thereof.

Utah Code Ann. § 73-1-4(1)(a) (1989):

> When an appropriator or his successor in interest abandons or ceases to use water for a period of five years, the right ceases, unless, before the expiration of the five-year period, the appropriator or his successor in interest files a verified application for an extension of time with the state engineer.

Utah Code Ann. § 73-1-10 (1989):

> Water rights, whether evidenced by decrees, by certificates of appropriation, by diligence claims to the use of surface or

> underground water, or by water users claims filed in general determination proceedings, shall be transferred by deed in substantially the same manner as real estate, except when they are represented by shares of stock in a corporation, in which case water shall not be deemed to be appurtenant to the land . . .

Idaho Code § 42-108 (1990):

> The person entitled to the use of water or owning any land to which water has been made appurtenant . . . may change the point of diversion, period of use, or nature of use . . . provided; if the right to the use of such water, or the use of the diversion works or irrigation system is represented by shares of stock in a corporation or if such works or system is owned and/or managed by an irrigation district, no change in the point of diversion, place of use, period of use, or nature of use of such water shall be made or allowed without the consent of such corporation or irrigation district.

V. WRONGFUL PARTITION

Utah Code Ann. § 78-39-1 (1992):

> When several cotenants hold and are in possession of real property as joint tenants or tenants in common . . . an action may be brought . . . for a partition thereof according to the respective rights of the persons interested therein.

STATEMENT OF THE CASE

I. NATURE OF THE CASE.

This is an appeal from the Final Judgment entered on February 25, 1992, by the Fourth District Court, for Utah County, which denies Plaintiffs-Appellants' ("Plaintiff's") motion for summary judgment and grants Defendants-Appellees' ("Defendant's") motion for summary judgment. Plaintiffs and defendants based their motions for summary judgment on a Stipulation Statement of Facts filed on June 10, 1991. The Final Judgment finds those stipulated facts to be undisputed. Plaintiffs seek reversal of the District Court's judgment and a remand to the State Engineer for a decision rejecting Payson's change application consistent with the Supreme Court opinion.

II. COURSE OF PROCEEDINGS.

On August 8, 1990, Plaintiffs jointly filed their Complaint seeking de novo review of an informal adjudicative proceeding commenced in the office of the Utah State Engineer. Defendant Payson City filed an Answer on August 23, 1990 (R.28-24) and Defendant Utah State Engineer filed an Answer on September 11, 1990 (R.34-29).

On April 12, 1991, Plaintiffs filed a Joint Motion for Summary Judgment (hereinafter "East Jordan's Motion for Summary Judgment") (R.74-72) and Joint Memorandum in Support of Motion for Summary Judgment (hereinafter "East Jordan's Memorandum in Support") (R.215-90). On June 10, 1991, Plaintiffs and Defendants jointly entered into a Stipulated Statement of Facts in connection with Plaintiff's Motion for Summary Judgment and Defendant's Cross Motion for Partial Summary Judgment ("Stipulated Facts" or "S.F.").[3/]

[3/] A copy of the Stipulated Facts is attached hereto as Addendum A. The Stipulated Facts were filed and docketed with the Fourth District Court but omitted from the indexed record on appeal. A copy of the Supplement to Index dated May 11, 1992 is attached at Addendum A.

Defendant's Joint Motion for Summary Judgment ("Payson's Motion for Summary Judgment") was filed on June 10, 1991 (R.290-289) in conjunction with Defendant's Joint Memorandum in Support of Defendant's Cross Motion for Partial Summary Judgment and In Response to Plaintiff's Motion for Summary Judgment ("Payson's Memorandum in Support") (R.282-220). Plaintiff's Joint Memorandum in Response to Defendant's Cross Motion for Partial Summary Judgment and in Reply to Defendant's Response to Plaintiff's Motion for Summary Judgment ("East Jordan's Memorandum in Response") was filed on July 15, 1991 (R.330-301) and Defendant's Joint Memorandum in Reply to Plaintiff's Response to Defendant's Cross Motion for Partial Summary Judgment ("Payson's Reply Memorandum") was filed on August 14, 1991 (R.360-346). The trial court entered a Ruling on December 10, 1991, denying East Jordan's Motion for Summary Judgment and granting Payson's Motion for Summary Judgment (R.504-502).[4/] On February 14, 1992, the parties entered into a Stipulation re: Amendment to Complaint and Entry of Final Judgment (R.508-506) so that the December 10, 1991 Ruling was dispositive of all issues. Final Judgment was entered on February 25, 1992 (R.511-509).[5/]

[4/] The Court's Ruling is attached hereto as Addendum B pursuant to Utah R. App. P. 24(f)(1). Future record citations to the Ruling are omitted.

[5/] The Court's Judgment is attached hereto as Addendum C pursuant to Utah R. App. P. 24(f)(1). Future record citations to the Ruling are omitted.

III. DISPOSITION IN DISTRICT COURT.

The February 25, 1992, Judgment made final the trial court's December 10, 1991, Ruling denying East Jordan's Motion for Summary Judgment and granting Payson's Motion for Summary Judgment: (1) upholding the right of a shareholder in a mutual water company to file a change application based on its stock ownership in the company; and (2) upholding the jurisdiction of the State Engineer to approve such a change application over the objection of the mutual water company (Addendum C, p.2).

IV. STATEMENT OF THE FACTS.

This matter arose in District Court as a de novo review of the Utah State Engineer's March 5, 1990, Memorandum Decision, as amended on July 9, 1990 (collectively "the Decision", attached, S.F. Exhibits E and F). Over the objection of East Jordan, the Decision approves a change application filed by, and in the name of a shareholder of East Jordan, to permanently alter the point of diversion, place and purpose of use of water rights owned by East Jordan. Upon review, the trial court upheld the Decision and found that the shareholder may file a change application without consent or approval of the Company even though the proposed change removes water beyond the distribution system of the Company. (Ruling, Addendum B, p.2.) Under the change application, Payson no longer takes water under its shares for irrigation purposes from East Jordan's canal in Salt Lake County. Rather, Payson now takes water under its shares from a well in

Utah County for municipal purposes (S.F. ¶19). East Jordan objects to this change and the trial court's Ruling as contrary to Utah law and Company Articles and policy.

East Jordan was formed as an irrigation company over 100 years ago to acquire water rights and divert company waters through an irrigation canal for the benefit of its shareholders. (S.F. ¶1.) In accordance with Articles of Association ("Articles") adopted in 1878, East Jordan acquired title to water rights in the Utah Lake and Jordan River Drainage Area. (S.F. ¶¶2 and 3.) Title to these water rights have been judicially confirmed and adjudicated in East Jordan under the Booth and Morse decrees (S.F. ¶3). Water stored in Utah Lake under Company water rights is diverted either from Utah Lake or Jordan River and delivered into East Jordan's canals for distribution and use by its shareholders primarily for irrigation purposes in Salt Lake County, Utah (S.F. ¶4).

There are 10,000 total shares of capital stock issued by East Jordan to approximately 650 different shareholders (S.F. ¶7). A share of East Jordan stock entitles the shareholder to the use of a proportionate amount of the Company's water rights. Company policy requires that any change in the place or nature of use of East Jordan water rights must be filed with the State Engineer by and in the name of East Jordan (S.F. ¶6).

Payson City acquired East Jordan stock in 1987 with the sole intent of transferring the water to Utah County to meet municipal needs within Payson City (S.F. ¶¶9, 13). On November

10, 1987, within a month of transfer of the stock, Payson City filed an application in its name with the State Engineer to change the point of diversion, place and purpose of use of 150.89 acre-feet of water under 38.5 shares of East Jordan stock. (S.F. ¶10). The change application sought to remove this water from irrigation uses within East Jordan's canal in Salt Lake County to a well used for municipal purposes in Utah County (S.F. ¶11). Prior to filing the application, Payson did not seek or obtain the consent of East Jordan's Board of Directors (S.F. ¶12).

East Jordan, Salt Lake City and Provo River Water Users protested the change application and were parties to the proceedings before the State Engineer (S.F. ¶14). The State Engineer approved the change application subject to conditions set forth in the Memorandum Decision dated March 5, 1990 (S.F. ¶15, copy attached thereto as Exhibit E). Both East Jordan and Payson petitioned for reconsideration and the State Engineer reheard the matter on April 12, 1990 (S.F. ¶16). The State Engineer reconfirmed approval of the change application subject to conditions set forth in an Amended Memorandum Decision dated July 9, 1990 (S.F. ¶17, copy attached thereto as Exhibit F). Plaintiffs appealed the State Engineer's Decision to the District Court seeking de novo review under Utah Code Ann. SS 73-3-14 (1989) and 63-46b-15 (1989). By Ruling dated December 10, 1991, made final by a judgment entered on February 25, 1992, the District Court upheld the State Engineer's Decision approving Payson's change application.

SUMMARY OF ARGUMENT

The Ruling upholding the State Engineer's Decision was in error as a matter of law and must be reversed. Payson's change application should be denied because it was filed by a shareholder who does not own legal title to the water right, without the approval and over the objection of the irrigation company, contrary to East Jordan's Articles, enabling authority and Company policy. Payson's application breaches the contract between the shareholder and the Company created by the Articles which places the exclusive duty to manage the affairs of the corporation, including the control of Company water rights in the Board of Directors.

Approval of the application violates Utah's change statute, Utah Code Ann. § 73-3-3 (1989), by allowing a shareholder to permanently amend Company water rights over the objection of the Company which owns legal title to those water rights. As a matter of law, the change impairs the company's water rights without just compensation in violation of Utah Code Ann. § 73-3-3(2)(b)(1989). The change application physically removes water from East Jordan's Canal in Salt Lake County to a municipal well in Utah County. This change severs East Jordan's water rights and constitutes a wrongful partition under Utah Code Ann. § 78-39-1(1992). Furthermore, the State Engineer is without jurisdiction to approve the shareholder's change application over East Jordan's objection.

ARGUMENT

I. THE RULING IS CONTRARY TO EAST JORDAN'S ARTICLES, POLICIES AND ENABLING AUTHORITY WHICH VEST THE EXCLUSIVE AUTHORITY TO APPROPRIATE AND CONTROL COMPANY WATER RIGHTS IN THE BOARD OF DIRECTORS

The District Court erred in ruling that the shareholder of a water company has authority, without consent of the Board of Directors, to file a change application to remove water outside the Company's distribution system. This Ruling upholds a change application which strikes at the very heart of the Board of Director's vital role to appropriate, control and administer Company water rights for the benefit of all shareholders as a whole, rather than for the benefit of an individual shareholder. Since incorporation of East Jordan, Company affairs, including the administration, control and preservation of East Jordan's waters and water rights, has been entrusted to a board of directors selected by the shareholders ("Board of Directors") (S.F. ¶5). Under Company policy, any change application based on East Jordan's water rights must be filed by and in the name of East Jordan, and, then, only if the same will not impair the rights of East Jordan and its shareholders (S.F. ¶6).

Payson's change application and the Ruling upholding the State Engineer's approval of the application violate Company policy and impair the exclusive authority of the Board of Directors to manage East Jordan's waters and water rights in several ways. Payson has stipulated that it acquired shares of irrigation company stock with the sole intent of transferring the water out of

East Jordan's distribution system to a well for municipal use (S.F. ¶¶9, 13). Within a month of receipt of the stock, Payson filed an application with the State Engineer to change the place, nature and use of water rights owned by East Jordan (S.F. ¶¶9, 10). Payson did not seek or obtain the Board of Director's consent prior to filing for transfer of water out of East Jordan's distribution system and the change application was made in the name of the shareholder, rather than in the name of the irrigation company (S.F. ¶¶10, 12).

The application changes the place of diversion, removing Company water from East Jordan's canal in Salt Lake County to a municipal well in Utah County, thereby removing physical control of these waters from the Board of Directors (S.F. ¶10, copy attached thereto as Exhibit D). The application changes the use of the Company water from irrigation use to municipal use. Id. The application changes the season of use for a portion of East Jordan water rights from the irrigation season (April 15 to October 31) to year-round use, allowing the shareholder winter water rights in excess of those appropriated by the Company under the Morse and Booth Decrees (S.F. ¶¶10, 19). Finally, under the approved change application, the right of East Jordan to take water from historical points of diversion under its existing water rights has been reduced by 186.34 acre feet (S.F. ¶18).

The State Engineer's approval of Payson's change application strips the Board of Directors of almost every vestige of authority over Company waters and water rights with which it is empowered under East Jordan's Articles. Under the State Engineer's analysis, all 650 shareholders in East Jordan have the unfettered right to move water under their shares anywhere they choose. The application was filed by Payson in direct violation of the Board of Director's policy requiring that change applications be filed in the Company name with board of Directors approval. The lower court upheld the approval, based upon "the absence of a specific restriction approved by the shareholders". (Ruling, Addendum B, p.1). Plaintiffs respectfully submit that East Jordan's Articles, course of conduct over the past 100 years in appropriating and administering Company water rights and Company policy regarding change applications constitute a "specific restriction approved by the stockholders" which prevents Payson from filing a change application in the absence of approval by the Board of Directors.

A. East Jordan's Articles, Course of Conduct and Company Policy Create a Contract Between the Shareholder and the Company Which Prevents the Shareholder from Filing a Change Without Approval of the Board of Directors

1. East Jordan's Articles of Agreement

East Jordan's Articles form the governing document to be construed by a court of competent jurisdiction regarding the respective rights and duties of the Company and its shareholders. East River Bottom v. Boyce, 102 Utah 149, 150, 128 P.2d 277, 278 (1942). The articles of incorporation of an irrigation company establish a contract between the corporation and its shareholders. Fower v. Provo Bench Canal & Irrigation Co., 99 Utah 267, 101 P.2d 375 (1940), cert. den. 313 U.S. 564 (1941). Contrary to the lower court's Ruling, East Jordan's Articles establish "specific restrictions" which define the duties and responsibilities between the shareholder and the Company, acting through its elected Board of Directors. Under the terms of its Articles, East Jordan, not its shareholders, own, appropriate and control water within the Company's diversionary system (Art. III, VII). Pursuant to the enabling acts under which East Jordan exists and was created, the shareholders must approve the Articles and any amendments thereto and have the further authority to elect members to the Board of Directors (Art. V). Therefore, the District Court erred in finding "the absence of a specific restriction approved by the stockholders" and the Ruling must be overturned.

East Jordan's Articles were approved and executed by the original incorporators, effective May 8, 1878, in accordance with the General Corporate Act of the Territory of Utah (SS 1, 2, Compiled Laws of Utah (1824). The Company currently operates under the Utah Non-Profit Corporation Act, Utah Code Ann. S 16-6-18, et seq., (1992). The original Articles and amendments thereto are on file with the State of Utah, Division of Corporations (S.F. ¶2, copies attached thereto as Exhibits A and B.) Under Article III, the purpose of the East Jordan canal was to direct a portion of the Jordan River, "to be appropriated, used, disposed of, sold and distributed" by the Company [emphasis added]. East Jordan was empowered to acquire lands and water rights and construct and maintain diversionary facilities necessary to achieve this purpose.

Pursuant to Section 6 of the General Corporate Act and Article III of the Articles, East Jordan acquired lands and constructed a system of canals, ditches and other facilities, and appropriated the vested water rights it owns for diversion from Utah Lake and Jordan River. <u>See</u> Utah Code Ann. § 16-6-20(1)(c); 16-6-22(4). East Jordan's ownership of said water rights in the amount of 170 cfs was confirmed by the <u>Morse</u> Decree, entered by the Third District Court, Salt Lake County, Utah, on July 15, 1901, and supplemented in November, 1906, in <u>Salt Lake City, et al. v. Salt Lake City Water & Electrical Power Co</u>., Civil No. 2861, Decree at 3-4, Supplemental Decree at 44, copy attached at Addendum D. East Jordan's title was later reconfirmed by the <u>Booth</u> Decree entered by the District Court of Utah County, Utah, on June 5, 1909, in <u>Salt Lake City v. James A. Gardner</u>, Findings at 3, (S.F. ¶3) copy attached at Addendum E. These water rights are currently on file with the State Engineer as water right nos. 57-7637 and 59-5268 (S.F. ¶3).

Because ownership of water rights is vested exclusively in the Company and Company policy rests solely with the Board, it follows that the Board alone can change East Jordan's water rights. The Board's sole authority in this respect has remained unchanged since adoption of the Articles in 1878. Under East Jordan's Articles and the laws of this State, the Company, not its shareholders, has the right to appropriate and control waters within East Jordan's diversionary system. (Id; Article III, VII.) The Board's exclusive right to appropriate and control Company waters encompasses the exclusive authority of the Company to change the place and nature of use of East Jordan's water rights.

Payson has filed the change application without Board approval and contrary to East Jordan's Articles and policies. East Jordan simply cannot manage its affairs if each of its more than 650 shareholders were entitled to file change applications as Payson maintains. East Jordan's Articles and policies require that title to the water rights remain with the Company; therefore, the role of the elected Board of Directors in exercising its fiduciary responsibility to protect those rights should not be usurped by Payson or the State Engineer. The State Engineer's approval of Payson's change application without the consent and over the objection of East Jordan was unauthorized under the Articles and the Ruling of the District Court upholding that approval must be overturned.

2. **Board Policy Requires that Company Water Rights be Managed in the Interest of the Shareholders as a Whole**

Since acquisition of water title, the Board alone has set the policies for the administration, control and preservation of Company waters (S.F. ¶5). Authority to determine such policies is set forth at Article VII, which provides that, "The Board of Directors shall have the general supervision, management, direction and control of <u>all</u> business and affairs of the Company of whatever kind" [emphasis added].

The vital role the Board serves in a nonprofit corporation was explained by the Utah Supreme Court in <u>Summit Range & Livestock Co. v. Rees</u>, 1 Ut. 2d 199, 265 P.2d 381, 382 (1953):

> It is the function and prerogative of the Board of Directors of the Corporation to manage its affairs in the best interest of the Corporation and its stockholders. Its actions in so doing will not be interfered with so long as it is within the framework of the purposes and powers included in the Corporate Charter, and the action is not fraudulent or so discriminatory as to be confiscatory of the rights of the defendant, who is a minority stockholder.

The Board's duty is to all shareholders and the Company as a whole, rather than to individual shareholders. <u>Park v. Alta Ditch & Canal Company</u>, 23 Ut. 2d 86, 458 P.2d 625 (1969). In that case, the Supreme Court upheld agreements whereby the company leased culinary water from a spring to a city and entered into an exchange contract to obtain irrigation water in return. Plaintiff's argument that a shareholder has absolute and indefeasible right to its pro rata share of the particular water right leased by the company to the city was rejected. The Court adopted the view that the company's obligation to manage the corporation's water supply for the company as a whole was paramount. Furthermore, in stark contrast to Payson's position here, the Court determined that each shareholder must accept company water in the same manner as others:

> They are basically agreements concerned with the management and exchange of water; and

> what they do to plaintiff is to compel him to accept his portion of the water distributed by the company in the <u>same</u> <u>manner</u> <u>as</u> <u>other</u> <u>shareholders</u> [emphasis added].

<u>Id</u>. at 627.

In this case, Payson is not seeking to use Company waters in the same manner as other shareholders. Payson has stipulated that it acquired shares of East Jordan stock <u>not</u> for use within the Company's delivery system, but to sever water out of the canal to suit Payson's municipal needs (S.F. ¶13). Under these circumstances, East Jordan clearly has an interest in reviewing the change application to determine whether it is in the best interests of the Company and its shareholders.

The Board of Directors has determined that a share of capital stock represents an equitable interest to a pro rata portion of the waters accruing to East Jordan's water rights. In this regard, Payson is entitled to no more than any other shareholder. Payson's 38.5 shares of capital stock in East Jordan is an equitable interest which entitles the shareholder to the <u>use</u> of a pro rata share of Company waters. However, this equitable interest is controlled by the Articles and subject to conditions set by the Board for the administration, control and protection of Company waters and water rights.

Therefore, East Jordan's shareholders must obtain the consent of the Board of Directors to effect a permanent change to Company water rights. This consent is an absolutely necessary means to insure that the Company's water rights are protected for all shareholders against the whim of the individual. Park v. Alta Ditch & Canal Co., 458 P.2d at 627. Payson's failure to obtain such consent prior to changing East Jordan's water rights is unauthorized by the Articles, disrupts the Board's control of Company water rights and impairs the purposes for which the Company was organized.

3. The Company's Change Policy is Consistent with the Majority of Western States

Since acquisition of Company water rights and adjudication of these rights in the Company's name, the Board of Directors has set the policies for administration, control and preservation of Company waters (S.F. ¶5). This specifically includes the Board's policy that any change applications based on East Jordan's water rights must be filed by and in the name of East Jordan, and then, only if the same will not impair the rights of East Jordan and its shareholders (S.F. ¶6). This policy is necessary for the reasonable administration of Company water rights in that East Jordan has issued some 10,000 shares of capital stock to approximately 650 different shareholders (S.F. ¶7). This policy was followed when East Jordan filed a change application on behalf of its shareholder, Salt Lake County Water Conservancy District, to change the point of diversion and place of use of a portion of the Company water rights (S.F. ¶20). The Board's policy is particularly appropriate to Payson's change application which removes water out of the distribution system and control of the Company and changes the nature of use from irrigation to municipal uses.

Although this is a case of first impression in Utah, this principle is supported in other jurisdictions. The States of California and Idaho both have an administrative process similar to Utah's for the filing and approval of change applications and both have soundly rejected the assertion that a shareholder has the inherent right to file change applications based on water rights owned by the corporation without the approval of the Board of Directors.

The California Supreme Court in Consolidated People's Ditch Co. v. Foothill Ditch Co., 205 Cal. 54, 269 P. 915 (Cal. 1928) enjoined a shareholder's attempt to change the point of diversion of company water rights without company approval. The Court reasoned that:

> The sole right of each and every stockholder in each of said corporations is the right in mutuality with its fellow stockholders of having the proportionate share of each of the distributable waters owned by such corporations supplied to such stockholder through the instrumentalities, including the system of dams, intake and ditches provided by the corporation for such proportionate distribution of the waters of the Kaweah river covered by its particular appropriation thereof, and it would seem too clear for argument that neither one nor any number of such stockholders would or could possess the legal right to take or receive the amount of water to which such stockholder or stockholders may be entitled by another manner or means than those supplied by the corporation itself . . . .
>
> To adopt the views of the main appellant herein, as to its right, derived solely from

> its holding of stock in the several corporations to go higher up the river than the points of intake of each and all of the corporations of which it is a stockholder, and establish there an intake and system of ditches sufficient in capacity to enable it to extract and carry away the amount of water represented in its aggregate holdings of corporate stock, <u>would necessarily be to admit the possession of similar rights in each and every stockholder in each of said corporations to go and do likewise, and it is too plain for argument that such an admission would result in a state of inextricable discord and confusion among the owners of water rights of various sorts along the course, not only on the Kaweah river, but of every other river and stream of water in California</u> . . .

<u>Id</u>. at 920 [emphasis added].

The facts of the instant action are very similar to those of <u>Consolidated</u>. Payson is not a long-time shareholder of East Jordan complaining that it has been deprived of its right to the use of water or that the action of the Board has been discriminatory or arbitrary as against Payson. Payson did not request delivery of water under the 38.5 shares for use within East Jordan's service area. Rather, Payson filed a change application within weeks of the transfer of ownership of the 38.5 shares of East Jordan stock to remove water from the Company's distribution system to a municipal well located outside the control of the Board of Directors. Payson did not even request the consent of the Board of Directors before filing the change application on Company water rights in Payson's name rather than on behalf of East Jordan. Payson's filing concerns the Plaintiffs herein not only as to the impact of this single change application in diminishing East Jordan's water rights, but also as to the precedent set to allow similar change applications by its 650 shareholders and the discord created for all water companies in Utah.

To address similar concerns, the Idaho Legislature, by amendment to its appropriation statute in 1947, clarified that Idaho law requires the shareholder to obtain irrigation company consent to a change application. Idaho Code § 41-108. The Idaho Supreme Court upheld the constitutionality of this statute in <u>Johnston v. Pleasant Valley Irrigation Co</u>., 204 P.2d 434 (Idaho 1949). In <u>Johnston</u>, a stockholder in an irrigation company filed a change application to alter the point of diversion and place of use of water represented by 100 shares of stock without the company's consent. The application was denied by the State Reclamation Engineer and the shareholder challenged the constitutionality of the Idaho change statute.

In rejecting the shareholder's challenge, the Idaho Supreme Court determined that such issues are matters relating to the <u>internal</u> affairs of the corporation and confirmed the authority of the company to require consent to change:

> It is recognized that a stockholder in a mutual irrigation company has a right peculiar to such corporations in that he may have distributed to him and use his proportionate share of the waters belonging to or distributed by such a corporation. <u>However, such a corporation has the usual rights pertaining to corporations with reference to the handling of its affairs and in dealing with its stockholders</u>. . . The refusal of a corporation to permit one of its shareholders to substantially withdraw from the corporation

> and change his relationship to the other stockholders without its consent, does not involve legislative power but is concerned with the internal affairs of the corporation.
>
> Nowhere in the cited statues or decisions or elsewhere have we been able to find any recognition of a right on the part of the shareholder in a water corporation to change its point of diversion and place of views, without the consent of the corporation, to a place where he could not be served by the irrigation system of the corporation. <u>The exercise of such a right would tend to disrupt the unity of the corporation and to impair the very purpose for which the same was formed. Carried to excess, it would destroy the usefulness of the corporation</u>. This is especially illustrated by this instant case where the appellant seeks to convert his pro-rata share in storage waters into a right to divert and use the natural flow of the stream before the same reaches the reservoir and at a place entirely outside the distribution system and beyond the control of the respondent.

<u>Id</u>. at 437, 438 [emphasis added].

The reasoning of the Idaho court is directly applicable to the instant action and illustrates the problem that Payson's change application has created for East Jordan and the remaining shareholders. As with the shareholder in <u>Johnston</u>, Payson seeks to remove the water from East Jordan's canals to an underground well which the Company does not control. Under Payson's change application, East Jordan's water rights have been physically moved from East Jordan's canals to Payson's well and East Jordan has no right to divert the transferred water during those years when Payson is not using the water. Normally, any water not used by a shareholder is part of the common pool. If some shareholders are unable to use the waters, it is the duty of East Jordan to make it available on a pro-rata basis to the remaining shareholders. See Smithfield West Bench Irrigation Co. v. Central Life Insurance Co., 142 P.2d at 866 (the Company cannot permit water to be lost by non-use thereof so long as any shareholder is in a position to use the water.) But here, if Payson does not exercise the water right by diverting the water from Payson's well, it cannot be beneficially used at all, and may even be forfeited. Under Utah Code Ann. § 73-1-4 (1989), if an appropriator fails to use a water right for a five-year period, the right ceases.

Only one western appropriation state, Colorado, permits shareholders to implement changes to a water right held by an irrigation company. However, contrary to Utah, Idaho and California, Colorado does not have a change application statute resulting in issuance of a change certificate to the application. In addition, the change process in Colorado is commenced in court, rather than with an application to an administrative agency. Therefore, disputes between the shareholder and the Company can be decided by a court of competent jurisdiction. 5 R.E. Clark, Waters and Water Rights, ¶414.1 (1972). However, even the Colorado Supreme Court has enforced a water company's bylaws requiring a shareholder to seek the board's approval before obtaining a change in a point of diversion. Ft. Lyon Canal Co. v. Catlin Canal Co., 642 P.2d 501 (Colo. 1982).

In sum, East Jordan's Articles and enabling act vest exclusive ownership and control of Company water rights in the Company and exclusive control over Company policy in the Board of Directors. The shareholder is not authorized by the Articles or Company policy to independently appropriate and/or change the Company's water rights. Payson has not obtained the consent of the Board of Directors to change East Jordan's water rights. Payson's change application clearly interferes in the management of the Company and control of its assets. Therefore, the State Engineer lacks authority to approve Payson's application to change East Jordan's water rights without approval of the Board of Directors.

B. <u>Payson Lacks the Legal Capacity Under Utah Code Ann. § 73-3-3 (1989) to Change the Water Rights Held in the Name of East Jordan</u>

The State Engineer's Decision granting Payson's change application over the Company's protest as the owner of legal title to these water rights is contrary to Utah Code Ann. § 73-3-3 (1989). The lower court Ruling upholds the State Engineer without specifically discussing Utah's change application statute. Neither the State Engineer's Decision nor the lower court Ruling can be reconciled with the appropriation statute and the Legislature's purpose to provide an orderly method for the <u>owners</u> of water rights to amend the place and nature of use of the water right.

Utah's change statute provides that "any person entitled to use of water" may make application for a permanent change. Utah Code Ann. § 73-3-3(2)(a) (1989). Section 8(a) of the statute also provides that "any person holding an approved application for the appropriation of water" may file a change application. Utah Code Ann. § 73-3-3(8)(a) (1989). Section 5(a) requires the State Engineer to follow the "same procedures" for a permanent change application as that "provided in this title for applications to appropriate water." In addition, the rights and duties of the applicant for a permanent change are the same as for application to appropriate. Utah Code Ann. § 73-3-3(5)(a)(1989).

Under Utah's Appropriation Statute, "the right to use water" is obtained under an application to appropriate filed with the State Engineer. Utah Code Ann. §§ 73-3-1 and 2 (1989). No "vested right" is acquired until such application is approved by the court or the State Engineer. <u>Whitmore v. Welch</u>, 114 Utah 578, 201 P.2d 954 (1949); <u>McGarry v. Thompson</u>, 114 Utah 442, 201 P.2d 288 (1948). This right remains inchoate until an applicant has submitted proof of appropriation and is issued a certificate by the State Engineer. Utah Code Ann. §§ 73-3-16 and 17 (1989); <u>Mosby Irr. Co. v. Criddle</u>, 11 Ut. 2d 41, 354 P.2d 848 (1960).

Payson has filed no application to appropriate and it holds no vested right in the Company water rights. To the contrary, title to Company water rights was judicially confirmed in the East Jordan under the <u>Morse</u> and <u>Booth</u> Decrees. Therefore, East Jordan, rather than its shareholders, has the exclusive right to file the change application under Utah Code Ann. § 73-3-3 (1989).

To permanently change a water right an applicant must at least hold an application to appropriate because the change forms the basis for perfecting title to a water right in the applicant. The process of obtaining title to a "vested water right" under a change application can best be described in three steps. First, the application is filed by the appropriator and approved by the State Engineer. Utah Code Ann. § 73-3-3 (1989). Second, the applicant submits proof to the State Engineer that the necessary facilities have been completed and the water put to beneficial use under the change. Utah Code Ann. § 73-3-16 (1989). The final step to acquiring the right is completed only after the certificate of change is issued by the State Engineer. Utah Code Ann. § 73-3-17 (1989); see Mosby Irrigation Co. v. Criddle.

The proof of use and certification process is the same for both applications to appropriate and applications for permanent change. Utah Code Ann. § 73-3-3(5)(a) (1989). Once issued, the certificate is the appropriator's deed of title, good against the State and everyone else who cannot show a superior right. Utah Code Ann. § 73-3-17 (1989); Little v. Greene & Weed Investments, 796 P.2d 718, 721 (Utah App.) cert. granted, 150 Utah Adv. Rep. 28 (Utah 1991); Lake Shore Duck Club v. Lakeview Duck Club, 50 Utah 76, 166 P. 309, 311 (1917). By approving Payson's change application, the State Engineer has provided a means for Payson to establish title to a certificated vested water right. The bundle of rights created in Payson by ownership of the change application, and ultimately a certificate of change, are far different from those represented by its equitable interest as a shareholder of East Jordan's stock.

The certificate of change is the equivalent of the owner's deed to the water right; "the right itself is treated as an incorporeal hereditament and is real property." In re Bear River Drainage Area, 2 Ut.2d 208, 271 P.2d 846 (1954) [emphasis added]; Cortella v. Salt Lake City, 93 Utah 236, 72 P.2d 630 (1937). If Payson proceeds to perfect an interest in real property, the water right may be conveyed, mortgaged and foreclosed upon, or even sold at a tax sale without East Jordan's knowledge. Stephens v. Burton, 546 P.2d 240 (Utah 1976) (conveyance by warranty deed); Little v. Greene & Weed Investments, 796 P.2d at 721, (conveyance by quitclaim deed); Thompson v. McKinney, 91 Utah 89, 63 P.2d 1056 (1937) (foreclosure of mortgage on land includes the water right); Black v. Johnson, 81 Utah 410, 18 P.2d 901 (1933) (tax sale may include water rights appurtenant to land). This real property interest in water rights and the authority to convey, encumber or lease the rights was vested by the Articles exclusively in East Jordan, not in its shareholders.

By contrast, the shareholder's interest in a share of East Jordan's stock is in the nature of personal property. Section 14 of the Corporate Act under which East Jordan was formed specifically provided that "stock shall be deemed personal property." Chap. IV, Compiled Laws of Utah (1874). Similarly, under Utah Code Ann. § 73-1-10 (1989), shares of stock in a corporation are specifically deemed not to be appurtenant to land and do not pass with a deed to real property interests. Yet, a water right appurtenant to the land passes with the deed unless expressly reserved therefrom. Little v. Greene & Weed Investments, 796 P.2d at 721. The conveyance of stock in an irrigation company requires physical transfer and is governed by the law controlling the transfer of stock certificates generally. See George v. Robison, 23 Utah 79, 63 P. 819 (1901). In contrast, a water right is conveyed by deed in substantially the same manner as real estate. Utah Code Ann. § 73-1-10 (1989). It has been held that an interest created in a certificate of stock in an irrigation company is a security governed by Article 9 of the Utah Uniform Commercial Code. Associates Financial Services Co. of Utah v. Sevy, 776 P.2d 650 (Utah App. 1989). Payson's stock certificate should not and does not evidence the right to sell, mortgage, lien or in any other manner dispose of the real property assets of East Jordan. Compare Thompson v. McKinney, 63 P.2d at 1056; Black v. Johnson, 18 P.2d at 901.

By approving Payson's permanent change application, the State Engineer has improperly converted the equitable personal property interest of a shareholder into legal title to a portion of East Jordan's water rights evidenced by an approved change application. This result is contrary to Utah's Appropriation

Statute and improperly diminishes the ownership and control of the Company in its real property assets.

C. As a Matter of Stipulated Fact, Payson's Change Application Impairs Vested Rights in Violation of Utah Code Ann. § 73-3-3(2)(b) (1989)

The State Engineer may not approve a change application if the change impairs any vested right without just compensation. Utah Code Ann. § 73-3-3(2)(b)(1989). However, the July 9, 1990 Decision of the State Engineer approving Payson's change application, by its own terms, diminishes East Jordan's vested water rights. As a result of approval of Payson's change application, the State Engineer specifically orders:

> The Utah Lake and Jordan River Commissioner **shall reduce the diversion into the East Jordan Canal** by 186.34 acre feet and the rate of diversion by 0.655 cfs. Furthermore, the **irrigated acreage** under the East Jordan Irrigation Company **shall be reduced** by 37.27 acres [emphasis added].

July 9, 1990 Decision, p. 3, S.F. ¶5, attached thereto as Exhibit F. Furthermore, Payson has stipulated that it now owns the approved permanent change application and that the right of East Jordan to divert water from historical points of diversion on Utah Lake and Jordan River under its existing water rights has been reduced by 186.34 acre feet (S.F. ¶18).

As a matter of stipulated fact, Payson's change application has diminished the Company's water rights and impaired the vested rights of the Company and other shareholders without compensation. Each such change approval reduces water available in the system to deliver the water rights of the remaining shareholders. Indeed, this reduction may subject the Company to liability to its shareholders for failure to deliver water. For example, under Utah law, a mutual ditch company is obligated to distribute to each shareholder its proper proportion of water and is liable and must respond in damages to a shareholder injured by its failure to discharge this duty. Swasey v. Rocky Point Ditch Co., 617 P.2d 375, 379 (Utah 1980).

The diversion of water out of East Jordan's system interferes with its ability to deliver water to its remaining stockholders and increases East Jordan's liability to those shareholders. Viewed alone, this change may appear insignificant; however, in conjunction with other change applications, it threatens the vested rights of the irrigation company and its shareholders. In interpreting Utah Code Ann. § 73-3-3 (1989), the Utah court has ruled that even a small adverse affect of a proposed change upon vested rights is sufficient to cause the change application to be denied. Piute Res. & Irr. Co. v. West Panguitch Irr. & Res. Co., 13 Ut. 2d 6, 367 P.2d 855, 858 (1962) (there is no "diminimus exception to the statute which prohibits approval of a change application when such change is adverse to other rights, since such repeated exceptions would cause unbearable damage to the affected water users.")

In sum, by approving Payson's change application, the State Engineer has acted contrary to the express provisions of Utah Code Ann. § 73-3-3(2)(b)(1990) by impairing the vested rights of East Jordan and its shareholders without compensation.

D. The State Engineer's Decision Wrongfully Partitions East Jordan's Legal Title to Company Water Rights

When several tenants hold and are in possession of real property as joint tenants or tenants in common, an action may be brought for a partition according to the respective rights of the parties. Utah Code Ann. § 78-39-1 (1992). East Jordan's water right is an interest in real property. In re Bear River Drainage, 271 P.2d at 846. East Jordan maintains that Payson's interest as shareholder is not a real property interest but an equitable right to use. However, assuming for the sake of argument that the ownership of shares of stock gives rise to a true tenancy in common relationship in the water rights of East Jordan, jurisdiction for a partition of the water rights is in the District Court rather than the office of the State Engineer. Utah Code Ann. §§ 78-39-1 (1992).

The true danger of the State Engineers's Decision is that by granting a change application in the name of Payson, a partitioning of East Jordan's legal title to the real property interest takes place. Title to a portion of the water rights is now evidenced by the approved change which is inappropriately held in the name of Payson rather than East Jordan.

With a transfer of title to Payson, there is also a partitioning of certain legal rights that Utah law recognizes as an incidence of ownership of a water right. East Jordan is vitally concerned that its proprietary interests are being wrongfully confiscated under the State Engineer's Decision without the approval of its Board or a vote of the shareholders. The State Engineer is precluded from approving a change application that impairs vested water rights. Crafts v. Hansen, 667 P.2d 1068 (Utah 1983). In addition, the partition of legal title to Company water rights is beyond the State Engineer's jurisdiction.

II. THE STATE ENGINEER LACKS JURISDICTION TO APPROVE A SHAREHOLDERS' CHANGE APPLICATION OVER THE COMPANY'S OBJECTION

Plaintiff respectfully submits that the trial court erred in finding jurisdiction in the State Engineer to approve the contested change application. Neither the State Engineer nor the trial court, upon stepping into the State Engineer's shoes on de novo review, have jurisdiction to approve a shareholder's change application over the objection of the water company. Whether the shareholder has a right to file a change application involves an analysis of corporate law and interpretation of East Jordan's Articles and Company policy which is beyond the competence of the State Engineer. Once the Company protested Payson's change application in proceedings before the Division of Water Rights, the respective rights of the Company vis a vis the shareholder were at issue and the State Engineer was faced with a legal question beyond his administrative jurisdiction.

As an administrative agency, the State Engineer lacks the necessary judicial authority and legal training to determine the respective rights of the parties. U.S. v. Fourth District Court, 121 Utah 18, 242 P.2d 774, 776 (1952) (the State Engineer is an executive officer and is not trained in law or competent to adjudicate legal questions); see also Whitmore v. Murray City, 107 Utah 445, 154 P.2d 748, 750 (1944) (the office of the State Engineer was not created to adjudicate vested rights between parties).

In this matter, East Jordan asserts that Payson has no shareholder rights under the Company Articles to file a change application without Company consent and over its protest. Payson takes issue and claims that the Articles and Company policy do not vest the Board with responsibility to make these kinds of decisions. This legal issue is a matter for decision by a court of competent jurisdiction, rather than by the administrative offices of the State Engineer. This Court has ruled on numerous occasions that the respective rights and duties of a water company and its shareholders is governed by the company's articles of incorporation. In East River Bottom v. Boyce, 102 Utah 149, 150, 28 P.2d 277, 278 (1942), judicial review of a water company's articles was necessary to establish the respective interests of the shareholder and the company to water rights under the company's stock. In Fower v. Provo Bench Canal & Irrigation Co., 99 Utah 267, 101 P.2d 375 (1940), this Court determined that the articles of incorporation form the basis of a contract between the corporation and its stockholders which defines and regulates their respective rights and duties.

In approving Payson's change application over the objection of East Jordan, the State Engineer essentially made a legal decision regarding the respective rights of the Company and the shareholder which was beyond his jurisdiction and competence. In upholding the change application in its December 10, 1991 Ruling, the trial court also reached several legal conclusions beyond the jurisdictional constraints of de novo review. The trial court determined "as a matter of law" and contrary to arguments of the Company that there was no specific restriction approved by the shareholder preventing the shareholder from filing the change (Ruling, Addendum B, p.1). The District Court further ruled that the shareholder "has the legal right" to change water represented by shares of East Jordan stock and the shareholder "may lawfully" file a change application without the consent or approval of the Company even when such change removes water beyond East Jordan's distribution system (Ruling, Addendum B, p.2). The Court upheld these shareholder rights "irrespective of the fact" that the water rights were appropriated and decreed in East Jordan (Ruling, Addendum B, p.2). Each of these findings by the trial court required trained legal analysis to interpret the respective rights of the Company and its shareholder which was beyond the competence and training of the State Engineer and outside the jurisdiction of the District Court upon de novo review.

In reviewing another change application considered by the Fourth District Court, the Supreme Court has ruled that neither the State Engineer nor the trial court on de novo review of the administrative agency has authority to adjudicate the respective rights of claimants. U.S. v. Fourth District Court, 121 Ut. 18, 242 P.2d 774 (1952). Citing the previous change application statute, the Court found:

> It leaves the adjudication of the rights which the applicant may have or may acquire under the application, and the rights of the protestants to the courts in another kind of proceeding and not to the Engineer who is merely an executive officer.

242 P.2d at 777 [emphasis added.]

As stated in U.S. v. Fourth District Court, the jurisdiction of the trial court to determine the respective rights of parties in a change application proceeding varies with the nature of the action subject to review. In this matter, the trial court was performing de novo review of a change application decision under Utah Code Ann. § 63-46b-15 (1989). The court on de novo review steps into the shoes of the State Engineer and is subject to the jurisdictional constraints of the administrative agency regarding that decision. The jurisdiction of the Court on de novo review is much narrower than in an action to quiet title to water rights such as in Smithfield West Bench Irr. Co. v. Union Central Life Ins. Co., 105 Utah 468, 142 P.2d 861 (1943). Similarly, the jurisdiction of the court on de novo review is more narrow than in a mandamus action by the shareholder to compel the board of directors to file the change application such as in Syrett v. Tropic & East Fork Irrigation Company, 97 Utah 56, 89 P.2d 474 (1939).

The District Court erred in citing Syrett to uphold the jurisdiction of the State Engineer to issue the change application over East Jordan's objection (Ruling, Appendix B, p.2). The action in Syrett did not arise as an appeal from a decision of the State Engineer regarding a change application. Indeed, the Court ruled that the shareholder need not file an application with the State Engineer to change water within the boundaries of a water company. 89 P.2d at 474, 475. Syrett arose in district court as a mandamus action to compel the board of directors to permit a shareholder to take his water from a different point along the canal to irrigate new lands. The district court dismissed the action for lack of jurisdiction on the basis that the change could not be made without first filing an application with the State Engineer. On review, this Court found that no change application was required and that the lower court had original jurisdiction over the mandamus action. Id. Therefore, Syrett is inapposite and was incorrectly applied by the District Court in upholding the jurisdiction of the State Engineer to decide Payson's contested change application. In a challenge to summary judgment, the Supreme Court gives no deference to the trial court's legal conclusions and reviews those conclusions for correctness, Bonham v. Morgan, 788 P.2d at 499. The district court was in error and the Judgment must be reversed for lack of jurisdiction.

In overturning the lower court's Ruling for lack of jurisdiction, the Court will not be leaving the shareholder without a remedy. The appropriate course of action of the shareholder in this matter was to bring its request for change application to the Board of Directors of East Jordan. In the event that the shareholder's request for change was unreasonably refused after consideration by the Board, the shareholder could file a mandamus action in court to compel the Board of Directors to file the change application. See Baird v. Upper Canal Irrigation Company, 70 Utah 57, 257 P. 1060 (1927); Syrett v. Tropic and East Fork Irrigation Co., 89 P.2d at 474. Indeed, in a mandamus action, Payson's arguments concerning the appropriateness of Board policy regarding change applications and the regulation of the shareholder's rights could be fully explored. However, this matter was not filed as a mandamus action but, rather, as a de novo review of the State Engineer's Decision. Therefore, the lower court may only consider those issues over which the State Engineer has jurisdiction. Payson has stipulated that it did not seek or obtain East Jordan's approval to change (S.F. ¶12). The State Engineer was without jurisdiction to grant Payson's application over East Jordan's objection until Company approval was obtained or a mandamus order issued. Furthermore, the trial court, on de novo review, was without jurisdiction to uphold the State Engineer's Decision over the Company's objection.

CONCLUSION

The Court should reverse and remand the Ruling and remand the Decision to the State Engineer with instructions to disapprove Payson's change application.

Respectfully submitted this 12th day of May, 1992.

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of May, 1992, four true and correct copies of the foregoing BRIEF OF APPELLANTS were deposited in the United States mail, postage prepaid, and addressed to:

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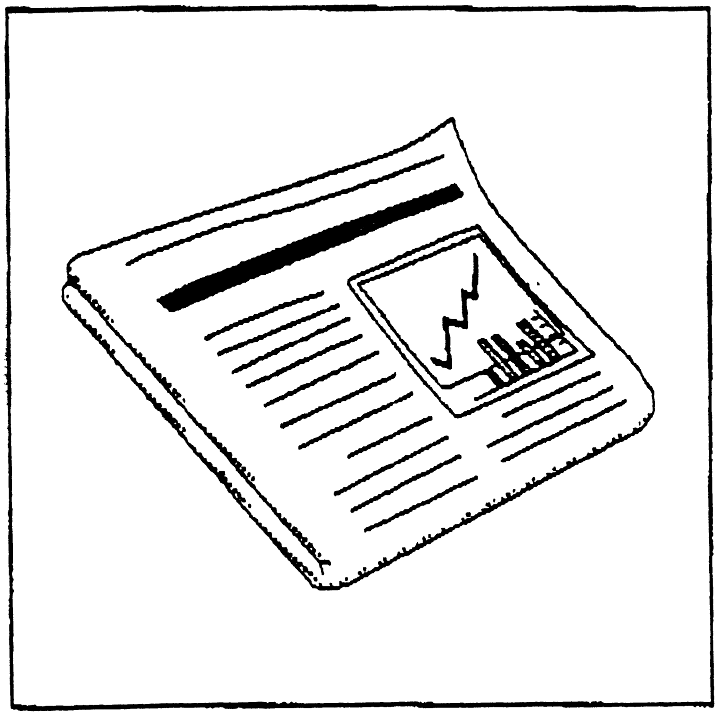
ADDENDA

Tab A

F A X

FOURTH JUDICIAL DISTRICT

FAX # 429-1020



TO: Denise Dragoo

FROM: Fourth District Court, Provo - Chris James

DATE: May 11, 1992

NUMBER OF PAGES (Including this page): 3

IN THE FOURTH JUDICIAL DISTRICT COURT

OF THE STATE OF UTAH

IN AND FOR UTAH COUNTY

****

EAST JORDAN IRRIGATION COMPANY, PROVO RIVER WATER USERS' ASSOCIA-, TION, SALT LAKE CITY CORPORATION,	CASE NO. 900400611
Plaintiff/Appellants,	SUPREME CT. #920125
vs.	
ROBERT L. MORGAN, State Engineer of Utah, and PAYSON CITY CORPORATION,	SUPPLEMENT TO INDEX DATED APRIL 1, 1992
Defendant/Appellees..	

****

Letter	580
Stipulated Statement of Facts in Connection with Plaintiffs' Motion for Summary Judgment and Defendants' Cross Motion for Partial Summary Judgment	579

I, CARMA B. SMITH, Clerk of the District Court of the Fourth Judicial District Court of the State of Utah in and for Utah County, do hereby certify that the preceeding is a correct and true index of a document which was entered in the file but cannot be located. A copy has now been filed as a substitute for the original and has been number as page #579.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said court at my office in Provo City, Utah on this 11th day of May, 1992.

CARMA B. SMITH
CLERK OF THE COURT

By ______________________
Deputy Clerk

COPY

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IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR

UTAH COUNTY, STATE OF UTAH

EAST JORDAN IRRIGATION COMPANY, PROVO RIVER WATER USERS' ASSOCIATION, SALT LAKE CITY CORPORATION,

Plaintiffs,

v.

ROBERT L. MORGAN, State Engineer of Utah, and PAYSON CITY CORPORATION,

Defendants.

STIPULATED STATEMENT OF FACTS IN CONNECTION WITH PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND DEFENDANTS' CROSS MOTION FOR PARTIAL SUMMARY JUDGMENT

Civil No. 900400611AP

Judge Cullen Y. Christensen

The parties, by and through their counsel of record, hereby stipulate and agree that the following statement of undisputed facts shall be relied upon by all parties for the limited purpose of supporting their respective motions for summary judgment, in lieu of the statement of material undisputed facts set forth in the plaintiffs' memoranda, to the extent the same are inconsistent, and in lieu of the Affidavit of William Marcovecchio which is superseded by this Stipulation.

STATEMENT OF UNDISPUTED FACTS

1. Plaintiff East Jordan Irrigation Company ("East Jordan") was organized in 1878 under the Laws of the Territory of Utah and exists under the Utah Non-Profit Corporation Act, Utah Code Ann. § 16-6-18, et seq.

2. A true and correct copy of East Jordan's Articles of Association ("Articles") effective May 8, 1878 are attached hereto as Exhibit "A." Copies of all amendments to the Articles are attached hereto as Exhibit "B."

3. East Jordan is a non-profit corporation owning legal title to certain water rights in the Utah Lake and the Jordan River Drainage Area. Title to these water rights have been confirmed and adjudicated in East Jordan in the Morse and Booth Decrees and filed in the State Engineer's office as Water Right numbers 57-7637 and 59-5268.

4. East Jordan's water rights are stored in Utah Lake and diverted either from Utah Lake or Jordan River and delivered into East Jordan's canals for distribution and use by East Jordan's shareholders primarily for irrigation purposes in Salt Lake County, Utah.

5. Since East Jordan's incorporation, the Company affairs, including the administration, control and preservation of East Jordan's waters and water rights, has been managed by a board of directors elected by the shareholders ("Board of Directors").

6. The policy of East Jordan is that any change applications based on East Jordan's water rights must be filed by and in the name of East Jordan, and then, only if the same will not impair the rights of East Jordan and its shareholders. The policy of the defendant State Engineer is that a share of stock entitles the shareholder to file a change application in its own name, subject to the provisions of Utah Code Ann. § 73-3-3.

7. There are 10,000 total shares of capital stock issued by East Jordan to approximately 650 different shareholders.

8. Plaintiff Salt Lake City Corporation ("Salt Lake") owns 2,067 shares or 20.67% of the capital stock in East Jordan.

9. Defendant Payson City ("Payson") owns 38.5 shares or 0.385% of the capital stock in East Jordan which was acquired by purchase from certain existing stockholders. After purchase, the

previous stock certificates were surrendered to East Jordan and the Company issued a new certificate in Payson's name on September 14, 1987. A true and correct copy of Payson's stock certificate is attached hereto as Exhibit "C."

10. On November 10, 1987 Payson filed Change Application No. 51-6055 (a-14510) in its name with the Utah State Engineer to permanently change the point of diversion, place and purpose of use of 150.89 acre-feet of water represented by 38.5 shares of East Jordan stock. A true and correct copy of the change application as filed by Payson is attached as Exhibit "D".

11. Change Application No. 51-6055 (a-14510) seeks to remove irrigation water represented by 38.5 shares of East Jordan's stock out of the Company's distribution system in Salt Lake County to a well used for municipal purposes in Utah County.

12. Prior to filing Change Application No. 51-6055(a-14510), Payson did not seek or obtain the consent of East Jordan's Board of Directors to permanently change the point of diversion, nature and place of use of water represented by Payson's 38.5 shares of capital stock.

13. Payson's intent when it acquired the 38.5 shares of East Jordan stock was not to use the water within East Jordan's delivery system, but was to provide for additional water to meet its municipal needs within Payson City.

14. East Jordan, Salt Lake City and Provo River Water Users Association protested Change Application No. 51-6055 (a-14510) and were parties to the proceedings before the State Engineer.

15. The State Engineer approved Change Application No. 51-6055 (a-14510) subject to conditions set forth in the Memorandum Decision dated March 5, 1990, a true and correct copy of which is attached as Exhibit "E."

16. East Jordan and Payson petitioned for reconsideration of the March 5, 1990 Decision and on April 12, 1990, the State Engineer reheard the matter.

17. On July 9, 1990, the State Engineer issued the Amended Memorandum Decision approving Change Application No. 51-6055 (a-14510) ("July 9, 1990 Decision"), subject to conditions set forth therein, a true and correct copy of which is attached as Exhibit "F."

18. Payson owns approved Change Application No. 51-6055 (al4510), and based thereon, the right of East Jordan to divert water from historical points of diversion on Utah Lake and Jordan River under its existing water rights has been reduced by 186.34 acre-feet.

19. Under the terms of the July 9, 1990 Decision, Payson is authorized to permanently change the point of diversion

of water represented by 38.5 shares of East Jordan stock from historical points of diversion on Utah Lake and Jordan River to a municipal well within Payson City and to divert up to 114 acre-feet of water during the period from April 15 to October 31 and up to 38 acre-feet of water from November 1 to April 14.

20. East Jordan filed Change Application No. 59-5268 (a-15002) on behalf of its shareholder, Salt Lake County Water Conservancy District, to change the point of diversion and place of use of a portion of the Company's water rights outside East Jordan's delivery system and said Change Application was approved by the State Engineer by Memorandum Decision dated October 6, 1989. A true and correct copy of Change Application No. 59-5268(a-15002) and the Memorandum Decision dated October 6, 1989 are attached as Exhibit "G" and Exhibit "H," respectively.

DATED this 10th day of June, 1991.

Denise A. Dragoo

Stanford B. Owen
Denise A. Dragoo
Sandra K. Allen
Attorneys for East Jordan Irrigation Company

Marc T Wangsgard

Joseph Novak
Marc T Wangsgard
SNOW, CHRISTENSEN & MARTINEAU
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Ray L. Montgomery
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Corporation

Steve E Clyde

Steven E. Clyde
Glen K. Vernon
Attorneys for Payson City

R. Paul Van Dam
Michael M. Quealy
John H. Mabey, Jr.
Attorneys for Robert L. Morgan,
State Engineer

DAD:052291a

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Articles of Association

We, the undersigned all residents of the Territory of Utah, being desirous of associating ourselves together as a corporation, for the purposes hereinafter specified, do hereby mutually agree to, and adopt the following articles of agreement-

Article I.

This association shall be known under the name and style of the East Jordan Irrigation Company, and its principal place of business shall be in South Cottonwood Precinct in the County of Salt Lake and Territory of Utah.

Art II.

This association shall continue in existence for the period of twenty five (25) years from and after the twenty fifth day of February in the year of our Lord one thousand eight hundred and seventy eight.

Art III.

The pursuit or business of this association is, and shall be the construction operation and maintenance of a canal - said canal to extend from a point in the Jordan River in Salt Lake County, Utah Territory, known as the Jordan Dam, on the East side of said River in a northerly direction, to a point at, or near, Salt Lake City, or to any intervening point, the purpose of said canal being to direct a portion of the waters of the said Jordan river, "to be appropriated, used, disposed of, sold and distributed by said association," for agricultural manufacturing, domestic or ornamental purposes, and to this end the said association, shall have power to construct and maintain the necessary dams, headgates, flumes conduits, pipes, or any other and different means by which water may be regulated, distributed, controlled or measured, and it" may enter into contracts, for the sale or disposition of said water so diverted for any of the purposes above mentioned. The place" of the general business of said company to be in Salt Lake County and Territory of Utah.

Art IV.

The limit of the capital stock of this company shall be two hundred thousand dollars, to be divided into shares of twenty five $25.00 dollars each but the whole of said stock need not be subscribed in the first instance and in the payment of any subscription it shall not be necessary to be made in money, but the equivalent thereof in labor or materials actually employed in the construction and maintenance of said canal, or in the management or direction thereof or with reference thereto shall be sufficient.

The following are the names of the members and stockholders of this company together with their several places of residence the amount of stock by each subscribed, the amount paid in by each with a description of the kind of payment respectively placed opposite thereto - to wit

Names	Place of residence	Amount of Stock subscribed	Amt of stock paid in	Descri of kin paymen
Joseph S. Rawlins-	South Cotton ª U.T.	$1500.00	$400.00	Laborempl in constr ing canal
Henry Day	Draperville " "	1500.00	500.00	" " "
Henry W. Brown	South Cotton ª " "	$ 400.00		" " " per Jos S Ra
Isaac C. Stewart	Draperville	$1000.00	$250.00	Labor em in conduc the cana
Lauritz Smith	"	800.00	200.00	" " "
G.W. Bankhead	"	200.00	50.00	" " "
Perry Fitzgerald	"	400.00	100.00	" " "
M. Fitzgerald	"	400.00	100.00	" " "
A.W. Smith	"	1000.00	250.00	" " "
W.C. Allen		100.00	100.00	" " "
A.J. Allen		200.00	100.00	" " "

Names	Place of Residence	Amount of stock subscribed.	Amt. Paid				
J.Z. Stewart	Draper	200.00	65.00	Labor employed i constructing ca			
Marion E. Brady	Union	400.00	200.00	Labor	"	"	"
Sondra Sendin	South Cottonwood	400.00	100.00	"	"	"	"
B.F. Perry	Draper	400.00	100.00	"	"	"	"
Christian H. Steffensen	South Cottonwood	200.00	75.00	"	"	"	"

Article V.

The officers of this association shall be eleven in number, all stockholders of the association, and shall consist of a President, Vice President, Secretary, Treasurer & seven other persons, who together with the other officers of the association above named - shall constitute the Board of Directors of this Corporation, all of said officers shall be elected at the first regular meeting of the stockholders of this association to be holden on the first Monday of May, A.D. 1878 and shall hold their office for the term of two years and untill the successors are elected and qualified. The election of the officers of th association shall take place at the regular meeting of the stockholders thereof every two years and at such election the persons receiving the vote of the majority of the stock represented at such meeting in their favor shall be deemed elected.

Article VI.

Any officer of this association may be removed from office after due notice by a two thirds vote of the stockholders atany regular or special meeting of the stockholders of the association, for the wilful violation or habitual neglect to perform the duties of such office. Provided, that for the like cause such officer may be suspended by a two thirds vote of the Board of Directors untill such meeting of the Stockholders of the association.

Article VII.

The duty of the President shall be to preside at all regular and special meetings of the stockholders of the association, and he shall act as Chairman of the Board of Directors, and in the absence resignation or removal of the President, the Vice President shall perform the like duties as the President.

The Secretary shall take and preserve the minutes of the proceedings of all meetings, both of the stockholders and Board of Directors and perform such other duties as may be prescribed by the bye laws of the association.

The Treasurer shall be the custodian of all monies & other funds belonging to the association, and shall keep an accurate account in a book kept for that purpose of the receipts and disbursements of the same.

The Board of Directors shall have the general supervision, management, direction & control of all the business and affairs of the company, of whatever kind. They shall have power to fill all vacancies in any office which may occur by death resignation or removal- to appoint all the necessary agents & define their duties to enable this association to effectuate the purpose for which it is created, to enact bye laws, defining the duties of all officers and to promote the objects & general welfare of the association, to suspend, pending the meeting of the stockholders of the association any officer thereof guilty of mis-conduct or habitual neglect in the performance of his duties, to call special meetings of the stockholders of the association when they may deem necessary, and they shall meet at such times & places as they deem fit by notice thereof to their several members.

Article VIII.

Regular meetings of the stockholders of this association shall be holden twice, each and every year, namely on the third Monday of April and October thereof.

Article IX.

The private property of the stockholders of the association, shall not be liable for the debts and obligations thereof

Article X.

These articles may be amended by a two thirds of vote of the stock at any regular meeting of the stockholders of the association.

In witness whereof we have hereunto set our hand this 6th day of April A.D. 1878

Names

J.S. Rawlins
Henry W. Brown
I.M. Stewart
A.W. Smith
Lauritz Smith
Manasseh Fitzgerald
A.J. Allen

B.F. Terry
Sondra Sandin
J.Z. Stewart
Perry Fitzgerald
Wm. C. Allen
George W. Bankhead
Henry Day
Marion H. Brady

Territory of Utah)
:SS.
Salt Lake County/)

Joseph S. Rawlins, Henry W. Brown, Henry Day and Absalon W. Smith being first duly sworn on their respective oaths say, that they are the same persons who are described, in, and who joined in the execution of the foregoing articles of agreement, that they have commence to carry on the business mentioned in said agreement, and affiants, veril believe that each party to said agreement, has paid or is able to, and will pay the amount of his stock subscribed, and affiants further state t twenty five per cent of the amount of stock subscribed by each of the parties to said agreement has been paid in.

Subscribed and sworn to before me this
6th of April A.D. 1878.
E. Smith
Probate Judge.

Jos.S. Rawlins
Henry Day
Absalon W. Smith
Henry W. Brown

Territory of Utah)
:ss.
County of Salt Lake.)

On this Sixth day of April A.D. One thousand eight hundred and seventy eight, personally appeared before me Elias Smith, Probate Judge, in and for the County of Salt Lake and Territory of Utah Joseph S. Rawlins, Henry W. Brown Henry Day and Absalom W. Smith personally known to me to be same persons described in and who joined in the execution of the foregoing articles of agreement who each for himself, acknowledted to me that he executed the samefreely and voluntari and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand this day and year first above written.

Jos. S. Rawlins
Henry W. Brown
Henry Day
Absalom W. Smith

Territory of Utah)
:ss.
Salt Lake County.)

E. Smith
Brobate Judge.

ENDORSED:

153

IN THE MATTER OF

INCORPORATING OF THE

EAST JORDAN IRRIGATION

COMPANY.

ARTICLES OF AGREEMENT.

Filed in the Clerk's Office,
Salt Lake County, Utah
May 8th, 1878,
D. Bockholt, Clerk

Class G. Form 71

State of Utah
County of Salt Lake,

D. Bockholt
I, ~~CLARENCE [illegible],~~ County Clerk in and for the County of Salt Lake, State of Utah, do hereby certify that the

Articles of Incorporation of
East Jordan Irrigation Company
(#153)

has duly filed in my office the Agreement of Icorporation, duly acknowledged, together with the oath of the incorporators and oath of office of each officer, as required by the Compiled Laws of Utah, 1917.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, this Eighth day of May ~~[illegible]~~ 1978

SEAL

D. Bockholt County Clerk

By ______________ Deputy Clerk

State of Utah
County of Salt Lake, } ss.

D. Bockholt
I, ~~CLARENCE CORWIN~~, County Clerk, in and for the County of Salt Lake, in the State of Utah, do hereby certify that the foregoing is a full, true and correct copy of the Articles of Incorporation and Oath of Incorporators, duly acknowledged, of

Articles of Incorporation of
West Jordan Irrigation Company
(#153)

as appears of record in my office.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, this Eighth day of May 1878

SEAL

D. Bockholt Clerk

By ________________ Deputy Clerk

State of Utah,
County of Salt Lake.

I, Clarence Cowan, County Clerk in and for the County of Salt Lake in the State of Utah, do hereby certify that the foregoing is a full, true and correct copy of ~~the original~~

ARTICLES OF INCORPORATION OF THE

EAST JORDAN IRRIGATION COMPANY

(#155)

as appears of record in my office.

In Witness Whereof, *I have hereunto set my hand and affixed my official seal, this* [illegible] *day of* MAY *192*1.

CLARENCE COWAN *Clerk*

By ______ *Deputy Clerk*

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We, James Jensen, President, and Henry W Brown, Secretary, of the East Jordan Irrigation Company, a corporation, heretofore organized and now existing under and by virtue of the laws of the State of Utah, do hereby certify that at a meeting of the stockholders of said corporation duly called and held for that purpose on the tenth day of April, A. D. 1902, articles two, three and five of the Articles of Incorporation of said corporation were amended as follows;

Article two by changeing the term of the corporate existance of the corporation from twenty-five years to fifty years from February 25th, 1878.

Article three by inserting therein after the words "distributed controlled or measured" and before the words "and it may enter into contracts", the following words, "and to do and perform such work and acts, and use such mechanical or other means and appliances as may be necessary to maintain or increase the flow of water in the said Jordan River".

Article five by changeing the number of Directors from eleven to seven and providing that the office of Secretary and Treasurer shall be held by the same person.

Said amendments do not alter the original purpose of said corporation, more than two-thirds of the outstanding capital stock of said corporation being cast in favor of each of the said amendments.

And we do further hereby certify and declare that the said Articles as so amended read as follows, to-wit;

Article 11.

This association shall continue in existence for a period of fifty years from and after the twenty-fifth day of February, in the year of our Lord one thousand eight hundred and seventy-eight.

Article 111.

The pursuit or business of this association is, and shall be, the construction, operation and maintenance of a canal, said canal to extend from a point in the Jordan River in Salt Lake County and Territory of Utah, known as the Jordan Dam, on the east side of said river in a northerly direction, to a point at or near Salt Lake City, or to any intervening point, the purpose of said canal being to divert a portion of the waters of said Jordan River, to be appropriated, used, disposed of, sold and distributed by said association, for agricultural, manufacturing, domestic or ornamental purposes, and to this end the said association shall have power to construct and maintain the necessary dams, headgates, flumes, conduits, pipes or other and different means by which water may be regulated, controlled or measured, and to do and perform such work and acts, and use such mechanical or other means and appliances as may be necessary to maintain or increase the flow of water in the said Jordan River; and it may enter into contracts for the sale or disposition of said water so diverted for any of the purposes above mentioned. The place of the general business of said company shall be in Salt Lake County and Territory of Utah.

Article V.

The officers of this association shall be seven in number, all stockholders of the association, and shall consist of a President, Vice-President, and a Secretary, who shall also be ex officio Treasurer, and four other persons, who, together with the other officers of the association above named, shall constitute the board of Directors of this corporation, all of said officers shall be elected at the first regular eeting of the stockholders of this association to be holden on the irst Monday of May, A. D. 1878, and shall hold their office for the erm of 2 years and until their successors are elected and qualified. The election of the officers of this association shall take place at the egular meeting of the stockholders thereof every two years, and at such lection the person receiving the vote of the majority of the stock represented at such meeting shall be deemed elected.

IN WITNESS WHEREOF we have hereunto set our hands this 19th day of April, A. D. 1902.

James Jensen
President.

Henry H Brown
Secretary.

State of Utah,
County of Salt Lake, } ss

I, John James County Clerk in and for the County of Salt Lake, in the State of Utah, do hereby certify that the foregoing is a full, true and correct copy of the original "AMENDMENTS to the Articles of Incorporation of the EAST JORDAN IRRIGATION COMPANY", as appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, this 21st day of April A. D. ~~189~~ 1902.

John James
County Clerk.

By
Deputy Clerk.

CERTIFICATE

RELATIVE TO AMENDMENTS TO ARTICLES OF INCORPORATION OF THE EAST JORDAN IRRIGATION COMPANY.

---ooOoo---

We, J. R. Allen, President, and W. D. Kuhre, Secretary of the EAST JORDAN IRRIGATION COMPANY, a corporation created, organized and existed under and by virtue of the laws of the State of Utah, heretofore being the territory of Utah, hereby certify to the Secretary of State of the State of Utah, that at a meeting of the stockholders of the corporation regularly and legally called upon notice for said purpose, and regularly held with the requirements of the Articles of Incorporation of said company, and the laws of the State of Utah, at the offices of said corporation, on March 17, A. D. 1916, a majority of said capital stock was represented by the holders thereof, in person or by proxy, and voted for the following amendments to the Articles of Incorporation, and the same were duly, regularly and legally adopted and passed, amending said Articles of Incorporation to read as follows:

ARTICLE I.

This association shall be known under the name and style of the EAST JORDAN IRRIGATION COMPANY, and its principal place of business shall be in the City of Sandy, Salt Lake County, Utah, and the Board of Directors may establish branch places of business at any other place or places, and at which branch places of business the meetings of the Board of Directors may be held, and the business of this corporation transacted.

ARTICLE VIII.

The regular annual meeting of the stockholders of this corporation shall be held on the first Monday of February, at the hour of 10:00 o'clock A.M., each and every year.

ARTICLE X.

The Articles of Incorporation may be amended in any respect conformable to the laws of this State, by a vote representing at least a majority of the amount of the outstanding capital stock of this corporation, at any regular or special stockholders' meeting called for that purpose.

Given under our hands and the seal of the corporation this 24th day of April, A. D. 1916.

J. R. Allen
President.

Richie
Secretary.

STATE OF UTAH, (
) SS.
COUNTY OF SALT LAKE. (

On the 24th day of April, A. D. 1916, personally appeared before me J. R. Allen and W. D. Kuhre, who being by me duly sworn, did say:

That they are the President and Secretary respectively of the EAST JORDAN IRRIGATION COMPANY, a corporation of Utah, and that the said above instrument was signed in behalf of said corporation by authority of a resolution duly, regularly and legally passed at a stockholders' meeting duly, regularly and legally called upon notice for said purpose, and the said J. R. Allen and W. D. Kuhre acknowledged to me that they executed the same, for and in behalf of said company.

(Seal)

William W. Wilson
Notary Public.

My commission expires

[illegible] 1917

ENDORSED: 153 AMENDMENT TO EAST JORDAN IRRIGATION COMPANY

FILED IN THE CLERK'S OFFICE SALT LAKE COUNTY, UTAH

Apr 26 1916 THOS. HOMER COUNTY CLERK By J. E. Clark, Deputy clerk

State of Utah,
County of Salt Lake, } ss.

I, THOS. HOMER, County Clerk in and for the County of Salt Lake, in the State of Utah, do hereby certify that the foregoing is a full, true and correct copy of the original

AMENDMENT TO ARTICLES OF INCORPORATION OF EAST JORDAN
IRRIGATION COMPANY

as appears of record in my office.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, this 26th day of April A. D. 1916

THOS. HOMER County Clerk

By J. E. Clark Deputy Clerk

AMENDMENTS TO ARTICLES OF INCORPORATION OF THE EAST JORDAN IRRIGATION COMPANY.

We, the undersigned, President and Secretary of the above named corporation, hereby certify that at a meeting of the stockholders of said company, held at its office in Sandy, Salt Lake County, Utah, (where this corporation has the place of its general business), upon due and legal notice given by the President and Secretary of the corporation, published in the Deseret Evening News, a newspaper printed in the English language, and having a general circulation in said County, said notice having been published in said paper in each issue thereof for twenty-one days, the first publication having been on the 12th day of February 1920, and the last publication on the 3d day of March, 1920, said notice being in words, as follows, namely:

"NOTICE OF SPECIAL STOCKHOLDERS' MEETING.

Notice is hereby given that a special meeting of the stockholders of the East Jordan Irrigation Company will be held on the 8th day of March, A. D. 1920, at 10 o'clock a.m., at the Sandy City Hall, Sandy, Utah, for the purpose of considering and voting upon a proposition to amend Article II, so that the period of duration of said corporation will be one hundred (100) years in place of fifty (50) years.

For the purpose of considering and voting upon a proposition to amend Article IV, so as to increase the limit of the capital stock of the corporation from Two Hundred Thousand ($200,000) Dollars, divided into shares of $25.00 each, to Two Hundred Fifty Thousand ($250,000) Dollars, divided into shares of $25.00 each.

For the purpose of considering and voting upon a proposition to amend Article V of the corporation, so that the same shall read as follows:

'The officers of this association shall be : (a) a board of seven (7) directors; (b) a president; (c) a vice-president; (d) a secretary; (e) a treasurer. No person shall be elected to fill an office of this corporation except the offices of secretary and treasurer, who is not the owner of at least one (1) share of the capital stock hereof, as shown by the books of the corporation. No person shall be elected to the office of president or vice-president who is not a director of the corporation. The office of secretary and treasurer may be held by one and the same person.

All of the directors shall be elected at the regular meeting of the stockholders and shall hold their office for the term of two (2) years, and until their successors are elected and qualified. The election of the directors shall take place at the regular meeting of the stockholders every two (2) years, and at such election the persons receiving the vote of the majority of the stock represented at said meeting shall be deemed elected.

The Board of Directors shall seledt the President, vice-President, the Secretary and Treasurer.

EAST JORDAN IRRIGATION COMPANY,

Per J. R. ALLEN, President."

there were represented five thousand four hundred six (5,406) shares of the outstanding capital stock of the said company, being a majority of all said outstanding stock; and by resolutions duly offered, seconded, passed and adopted by, all said votes being cast in favor of each of said resolutions, the said Articles of Incorporation were amended as follows, namely:

Article II was amended so that the same should and the same does now read, as follows:

ARTICLE II.

This association shall continue in existence for a period of one hundred (100) years, from and after the 25th day of February, 1878.

And Article IV was amended so that the same should and does now read as follows:

ARTICLE IV.

The limit of the capital stock of this corporation shall be Two Hundred Fifty($250,000) Thousand Dollars, to be divided into shares of Twenty-five ($25.00) Dollars each.

And Article V was amended so that the same should and does now read, as follows:

ARTICLE V.

The officers of this association shall be: (a) a board of seven (7) directors; (b) a president; (c) a vice-president;

(d) a secretary; (e) a treasurer. No person shall be elected to fill an office of this corporation except the offices of secretary and treasurer, who is not the owner of at least one (1) share of the capital stock hereof, as shown by the books of the corporation. No person shall be elected to the office of president or vice-president who is not a director of the corporation. The office of secretary and treasurer may be held by one and the same person.

All of the directors shall be elected at the regular meeting of the stockholders and shall hold their office for the term of two (2) years, and until their successors are elected and qualified. The election of the directors shall take place at the regular meeting of the stockholders every two (2) years, and at such election the persons receiving the vote of the majority of the stock represented at said meeting shall be deemed elected.

The board of directors shall select the president, vice-president, the secretary and treasurer.

IN WITNESS WHEREOF, we have hereunto set our hands as President and Secretary respectively, of said corporation, this 13th day of March, A. D. 1920.

J R Allen
President.

A R Gardner
Secretary.

STATE OF UTAH,)
) SS
COUNTY OF SALT LAKE.)

J. R. ALLEN and A. R. GARDNER, being each first duly swor each for himself on his oath says:

That they are respectively the president and secretary, and acted as such at the meeting above referred to of the East Jordan Irrigation Company.

Affiants further say that they are the signers of the foregoing certificate, and that the statements therein made are true of their own knowledge, and that the said Articles of Incorporation were amended as therein stated and set forth.

Further affiants sayeth not.

(Corporate)
(Seal)

A K Gardner

Subscribed and sworn to before me this 23 day of ~~March~~ May, A. D. 1920.

William W Wilson

Notary Public, Salt Lake County,
State of Utah.

ENDORSED #153

AMENDMENTS TO ARTICLES

OF INCORPORATION OF THE

EAST JORDAN IRRIGATION COMPANY

Filed In The Clerk's Office

Salt Lake County,Utah,

Jun 9 1920

J.E. CLARK, County Clerk,

By Jennie T. Harrington

Deputy Clerk.

Class G. Form 70

State of Utah,
County of Salt Lake. } ss.

I, J. E. CLARK, County Clerk in and for the County of Salt Lake in the State of Utah, do hereby certify that the foregoing is a full, true and correct copy of the original AMENDMENTS TO ARTICLES OF INCORPORATION OF THE EAST JORDAN IRRIGATION COMPANY,

#155

as appears of record in my office.

In Witness Whereof, *I have hereunto set my hand and affixed my official seal, this* 9th *day of* June 1920.

J.E. CLARK *Clerk*

By Jennie T. Harrington *Deputy Clerk*

East Jordan Irrigation Company
358 NORTH STATE STREET — PHONE 255-8311
SANDY CITY, UTAH

RECEIVED

February 24, 1978

LT. GOV/SEC.

Filed in the office of the Lt. Gov. 24th
Feb 78
Lt. Governor/Sec. of State
Filing Clerk MC $5.00

David S. Monson.
Lt. Governor, Sec. of State
203 State Capitol Building
Salt Lake City, Utah 84114

Re: Articles of Incorporation No. 153

Dear Mr. Monson:

At the regular Board of Directors meeting of the East Jordan Irrigation Company held February 20, 1978 a motion was made by Mr. Charles W. Wilson and seconded by Mr. Oscar F. Sjoblom that Article II be amended to read that this association shall continue in existence for a period of one hundred (100) years from and after the 25th day of February 1978. This motion passed unamiously.

Yours very truly,

Alma Fairbourn

Alma Fairbourn, President
East Jordan Irrigation Company

Subscribed and sworn to me this 24 day of February 1978.

My Commission expires:

Sept. 14, 1979

Residing at Sandy, Utah

Notary Public

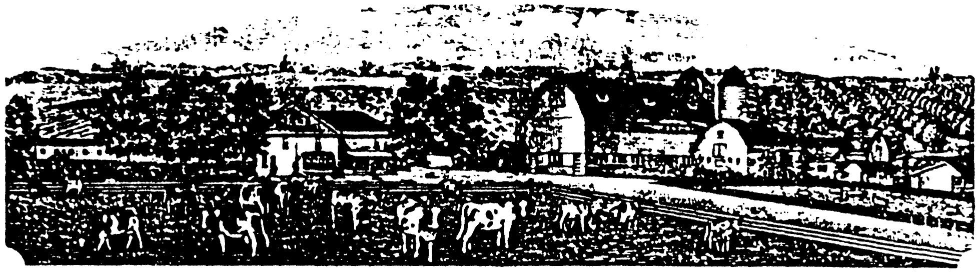
EXHIBIT C

NUMBER

D 530

SHARES

38½



East Jordan Irrigation Co.

CAPITAL STOCK $250,000.00

SHARES $25.00 EACH

This certifies that -----Payson City Corporation-------- is the registered holder of ----Thirty eight and one-half (38½)-------------- Shares

of the Capital stock of East Jordan Irrigation Co.

transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed this 14 day of September A.D. 19 87

MICROFILMED

SECRETARY

PRESIDENT

CERTIFICATE FOR

SHARES
OF THE
CAPITAL STOCK
OF
East Jordan
Irrigation Company

ISSUED TO
Payson City Corporation

DATED
September 14, 1987

FOR VALUE RECEIVED ______________ hereby sell, assign and transfer unto

____

____ Shares

represented by the within Certificate and do hereby irrevocably constitute and appoint

____ Attorney

to transfer the said Shares on the books of the within named Corporation with full power of substitution in the premises.

Dated ______________, 19____

In presence of

______________________ ______________________

NOTICE The signature of this assignment must correspond with the name as written upon the face of the certificate, in every particular, without alteration or enlargement, or any change whatever.

APPLICATION FOR PERMANENT CHANGE OF WATER

STATE OF UTAH

NOV 10 1987
WATER RIGHTS
SALT LAKE

Rec. by
Fee Paid $ 30.00
Receipt # 23215
Microfilmed
Roll #

Amended

For the purpose of obtaining permission to make a permanent change of water in the State of Utah, application is hereby made to the State Engineer, based upon the following showing of facts, submitted in accordance with the requirements of the Laws of Utah.

---

*WATER RIGHTS NO. 51-6055 *APPLICATION NO. a 14510

Changes are proposed in (check those applicable)

X point of diversion. X place of use. X nature of use.

1. **OWNER INFORMATION**

Name: PAYSON CITY CORP. Interest: 100 %
Address: 439 West Utah Ave.
City: Payson State: Utah Zip Code: 84651

2. *PRIORITY OF CHANGE: *FILING DATE:

*Is this change amendatory? (Yes/No):

3. **RIGHT EVIDENCED BY:** 38-1/2 shares in East Jordon Irrigation Company. Attached is a copy of the Water Certificate.

Prior Approved Change Applications for this right:

*************************************** **HERETOFORE** ***************************************

4. **QUANTITY OF WATER:** cfs and/or 150.89 ac-ft. 3.95 acre feet to 1 share.
5. **SOURCE:** Utah Lake
6. **COUNTY:** Salt Lake
7. **POINT(S) OF DIVERSION:** South 1000 ft. West 40 ft. from the N-1/4 corner of S 25 T 5 S R 1 W SLBM. North 180 ft. East 1880 ft. from the W 1/4 corner of S 26 T 4 S R 1 W, SLBM.

Description of Diverting Works:

8. **POINT(S) OF REDIVERSION**

The water is rediverted from at a point:

Description of Diverting Works:

9. **POINT(S) OF RETURN**

The amount of water consumed is cfs or ac-ft.

The amount of water returned is cfs or ac-ft.

The water is returned to the natural stream/source at a point(s): Historically there was a return flow to Jordon River

NATURE AND PERIOD OF USE

Stockwatering: From Nov. 1 to March 1
Domestic: From ______ to ______
Municipal: From ______ to ______
Mining: From ______ to ______
Power: From ______ to ______
Other: From ______ to ______
Irrigation: From April 1 to Oct. 31

PURPOSE AND EXTENT OF USE

Stockwatering (number and kind): ______
Domestic: ______ Families and/or ______ Persons.
Municipal (name): ______
Mining: ______ Mining District in the ______ Mine.
Ores mined: ______
Power: Plant name: ______ Type: ______ Capacity: ______
Other (describe): ______
Irrigation: ______ acres. Sole supply of ______ acres

PLACE OF USE

Legal description of areas of use by 40 acre tract: ______
Within service area of East Jordon Irrigation Company
within Salt Lake County See file #57-7637

STORAGE

Reservoir Name: Utah Lake Storage Period: from Jan. 1 to Dec. 31
Capacity: ______ ac-ft. Inundated Area: ______ acres
Height of dam: ______ feet
Legal description of inundated area by 40 tract: ______

THE FOLLOWING CHANGES ARE PROPOSED

QUANTITY OF WATER: ______ cfs and/or ______ ac-ft
SOURCE: Utah Lake Remaining Water: ______
COUNTY: ______
POINT(S) OF DIVERSION: a Well located at point North 1700 feet, thence East 100 feet from the SW 1/4 of Section 17 T 9 S R 2 E SLBM.

Description of Diverting Works: Well 600 ft. deep 20 inch casing 16 inch well perforation 230 - 235; 380 - 414 ft.; 450 - 580 ft. Application No. a-7726 (51-2525)

POINT(S) OF REDIVERSION

The water will be rediverted from ______ at a point: ______

Description of Diverting Works: ______

19. POINT(S) OF RETURN

The amount of water to be consumed is ______ cfs or ______ ac-ft

The amount of water to be returned is ______ cfs or ______ ac-ft

The water will be returned to the natural stream/source at a point(s): ______

20. NATURE AND PERIOD OF USE

Stockwatering:	From ______	to ______
Domestic:	From ______	to ______
Municipal:	From Jan. 1	to Dec. 31
Mining:	From ______	to ______
Power:	From ______	to ______
Other:	From ______	to ______
Irrigation:	From ______	to ______

21. PURPOSE AND EXTENT OF USE

Stockwatering (number and kind): ______

Domestic: ______ Families and/or ______ Persons

Municipal (name): Payson City Corp.

Mining: ______ Mining District in the ______ Mine

Ores mined: ______

Power: Plant name: ______ Type: ______ Capacity: ______

Other (describe): ______

Irrigation: ______ acres. Sole supply of ______ acres

22. PLACE OF USE

Legal description of areas of use by 40 acre tract: Payson City Incorporated area 3485.75 acres.

23. STORAGE

Reservoir Name: ______ Storage Period: from ______ to ______

Capacity: ______ ac-ft. Inundated Area: ______ acres

Height of dam: ______ feet

Legal description of inundated area by 40 tract: ______

24. EXPLANATORY

The following is set forth to define more clearly the full purpose of this application. Include any supplemental water rights used for the same purpose. (Use additional pages of same size if necessary): ______

STATE ENGINEER'S ENDORSEMENT

HANGE APPLICATION NUMBER: a14510 WATER RIGHT NUMBER: 51 - 6055

.	November 10, 1987	Change Application received.
ı	November 10, 1987	Priority of Change Application.
.	November 25, 1987	Application reviewed and approved for advertising by EDF.
	December 17, 1987	Publication began in Payson Chronicle.
	February 5, 1988	Publication completed and verified by SA.
.	January 30, 1988	End of protest period. Application protested: YES (see comments below.)
.	March 5, 1990	Application designated for APPROVAL by JER and KLJ.

. Comments:
Protested by: East Jordan Irrigation Co. 01-29-88, Provo River Water Users' Assoc. c/o Joseph Novak 01-27-88. Salt Lake City Corporation.

onditions:
This application is hereby APPROVED by Memorandum Decision, dated July 9, 1990, subject to prior rights and the following conditions:

a. Actual construction work necessitated by proposed change shall be diligently prosecuted to completion.
b. Proof of change shall be submitted to the State Engineer's Office by November 30, 1993.

Robert L. Morgan
Robert L. Morgan, P.E.
State Engineer

ime for making Proof of Change extended to ____________________

roof submitted ____________

EXHIBIT "E"

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF CHANGE APPLICATION

MEMORANDUM DECISION

NUMBER 51-6055 (a14510)

Change Application Number 51-6055 (a14510) was filed by Payson City Corporation, on November 10, 1987, to change the point of diversion, place, and nature of use of 152.0 acre-feet of water represented by 38.5 shares of stock in the East Jordan Irrigation Company. Heretofore, the water was diverted at the following two points: (1) Utah Lake, South 1282 feet and West 17 feet from the N1/4 Corner of Section 25, T5S, R1W, SLB&M; (2) Jordan River, South 94 feet and East 1973 feet from the W1/4 Corner of Section 26, T4S, R1W, SLB&M. The change application states that the water was used for the irrigation of land under the East Jordan Irrigation Company's system.

Hereafter, it is proposed to divert 152.0 acre-feet of water from a 20-inch diameter well, 600 feet deep, located North 1700 feet and East 100 feet from the SW Corner of Section 17, T9S, R2E, SLB&M. The water is to be used January 1 to December 31 for municipal purposes in Payson City.

The change application was advertised in the Payson Chronicle from December 16, 1987, to December 30, 1987; in the Spanish Fork Press from December 17, 1987, to January 1, 1988; and in the Deseret News from December 17, 1987, to December 31, 1987. Protests were received from East Jordan Irrigation Company, Provo River Water Users' Association and Salt Lake City Corporation. The protests are summarized as follows:

1. East Jordan Irrigation Company and Provo River Water Users' Association assert that the change application should have been filed by the East Jordan Irrigation Company.

2. Provo River Water Users' Association and Salt Lake City Corporation contend that the change application will impair their vested rights in Utah Lake.

3. It is asserted by Provo River Water Users' Association that the change application constitutes an enlargement of a water right because it proposes to divert water year round for municipal use, whereas the East Jordan Irrigation Company has a right for only the irrigation season.

4. Salt Lake City Corporation maintains that decreased flow in the East Jordan Canal will increase seepage and conveyance losses. Also, the change application does not account for times when the water supply to the East Jordan Irrigation Company is restricted because of extremely low storage in Utah Lake.

A hearing was held on July 19, 1989, at Provo, Utah. Counsel for the applicant and protestants, Provo River Water Users' Association and Salt Lake City Corporation, stated that they intended to enter into a stipulation that would resolve the protests. This stipulation would be submitted shortly.

Subsequently, the State Engineer received a letter dated July 27, 1989, from counsel for the applicant stating that he had been unsuccessful in accomplishing anything with counsel for the protestants regarding the stipulation. Also, he asked that the State Engineer act on the change application as soon as possible because Payson City was in need of more water.

The State Engineer has reviewed the change application, protests, and the hydrologic regimen of the Utah Lake system. He has concluded the following:

a. Firstly, it is the opinion of the State Engineer that a stockholder in an irrigation company has a vested water right: consequently, the application is proper and can be considered by the State Engineer.

b. When the change application was prepared, it was based on an evaluation of one share of East Jordan Irrigation Company stock to represent 3.94 acre-feet. The State Engineer has subsequently reevaluated the East Jordan Irrigation Company's stock in connection with another recently filed change application. He now believes that one share of stock equates to approximately 0.968 acres. Furthermore, in the "Proposed Determination of Water Rights in Utah Lake and Jordan River Drainage Area, Salt Lake County, West Division" (Proposed Determination), the State Engineer has recommended an irrigation diversion requirement of 5.0 acre-feet per acre and this duty appears reasonable for lands located east of the Jordan River. Hence, one share of stock represents a diversion right of 4.84 acre-feet and the 38.5 shares a right to 186.34 acre-feet.

c. The consumptive irrigation requirement for Salt Lake Valley has been calculated to be approximately 2.41 acre-feet per acre. Therefore, the 38.5 shares of East Jordan Irrigation Company stock represents a depletion of 89.82 acre-feet. It is the opinion of the State Engineer that this depleted quantity is the only amount which can be safely considered in the proposed change.

d. A substantial amount of the ground water in Utah Valley which is not diverted by wells or other means flows into Utah Lake and contributes to the water supply of the Lake. The applicant has a right to deplete 89.82 acre-feet of the water in Utah Lake. Whether this is done by a release of water stored in Utah Lake into the East Jordan Canal and used for irrigation in Salt Lake Valley or by diversion of water before it reaches the Lake, the basic effect on Utah Lake is the same. Diversion of water into the East Jordan Canal must be reduced by the amount represented by the applicant's 38.5

shares, or 136.34 acre-feet. The difference between the 136.34 and 39.82 acre-feet, or 96.52 acre-feet, will be stored in Utah Lake and released to the lower reaches of the Jordan River to compensate for the loss of return flow from heretofore irrigation. Also, since there are 10,000 shares of stock in the East Jordan Irrigation Company, its rate of diversion of 170 cfs must be reduced by 0.655 cfs (38.5/10,000 x 170 = 0.655). The applicant's rate of diversion must be limited to 0.316 cfs (0.655 x 2.41/5.0 = 0.316).

e. The State Engineer does not believe that there should be any reduction in the applicant's water allocation because of evaporation of water from Utah Lake. The water to which the applicant is entitled in Utah Lake is part of the net water supply of the Lake and this net supply is inflow less outflow and evaporation.

f. Regarding conveyance losses, the recommended irrigation duty of 5.0 acre-feet per acre does not include potential conveyance losses. Such losses are to be determined in a supplemental report to the Court in conjunction with the general adjudication proceedings. Consequently, the State Engineer has not considered this an issue in reviewing the change application.

In view of the foregoing, the State Engineer believes the change application can be approved without impairment to vested rights if certain conditions are imposed. It is not the intention of the State Engineer in evaluating various elements in the underlying right to adjudicate the extent of the right, but rather to provide sufficient definition of the right to assure that other vested rights are not impaired by the change and/or no enlargement occurs. If, in a subsequent action, the Court adjudicates that this right is entitled to either more or less water, the State Engineer will adjust the figures accordingly.

It is, therefore, ORDERED and Change Application Number 51-6055 (a14510) is hereby APPROVED subject to all prior rights and the following conditions:

1. The total annual diversion of water under the change application shall not exceed 39.82 acre-feet, but may be limited to a lesser quantity if the water supply to the East Jordan Irrigation Company is scarce in a particular year. Furthermore, the applicant shall maintain ownership of the 38.5 shares of stock, pay his assessment to the East Jordan Irrigation Company, and meet any other obligations he may incur as a shareholder in the Company.

2. The maximum rate of diversion from the well hereafter under the change application shall not exceed 0.316 cfs.

The applicant shall install a permanent totalizing water meter on his water system to measure the water diverted from the well under the change application, and the meter shall be available for inspection by the State Engineer and at all reasonable times as may be required by the duly appointed Utah Lake and Jordan River Commissioner and/or the authorized water master involved in the distribution of water for the East Jordan Irrigation Company in regulating this change application. The total quantity of water diverted annually as evidenced by this totalizing meter shall be reported by the Utah Lake and Jordan River Commissioner in his annual report to the State Engineer.

4. 36.52 acre-feet shall be released from Utah Lake by the Utah Lake and Jordan River Commissioner to flow to the lower reaches of the Jordan River as compensation for loss of return flow from heretofore irrigation.

5. The Utah Lake and Jordan River Commissioner shall reduce the diversion into the East Jordan Canal by 136.34 acre-feet and the rate of diversion by 0.655 cfs.

6. At the time of submittal of proof of permanent change, the applicant shall include a description of the land taken out of irrigation that was formerly irrigated by the applicant's 38.5 shares of stock in the East Jordan Irrigation Company.

no
such
land

Any additional costs incurred by the Utah Lake and Jordan River Commissioner in the administration of the change application shall be borne by the applicant. The amount of such costs shall be determined by the River Commissioner and/or the State Engineer.

This Decision is subject to the provisions of Section 73-3-14, Utah Code Annotated, 1953, which provides for plenary review by the filing of a civil action in the appropriate District Court within 60 days from the date hereof.

Dated this 5th day of March, 1990.

Robert L. Morgan

Robert L. Morgan, P.E., State Engineer

RLM:EDF:ap

Mailed a copy of the foregoing Memorandum Decision this 5th day of March, 1990 to:

Payson City Corporation
439 West Utah Avenue
Payson, UT 84651

East Jordan Irrigation Company
8565 South State Street
Sandy, UT 84070

Provo River Water Users' Association
c/o Joseph Novak, Attorney
10 Exchange Place, P.O. Box 45000
Salt Lake City, UT 84145

Salt Lake City Corporation
c/o Ray L. Montgomery
Law Department, Suite 505A
Salt Lake City and County Building
451 South State Street
Salt Lake City, UT 84111

David B. Gardner
1611 East Waters Lane
Sandy, UT 84092

By: Robin Campbell
Robin Campbell, Secretary

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF CHANGE APPLICATION	)	
	)	AMENDED MEMORANDUM DECISION
NUMBER 51-6055 (a14510)	)	

Change Application Number 51-6055 (a14510) was filed by Payson City Corporation, to change the point of diversion, place, and nature of use of 152.0 acre-feet of water represented by 38.5 shares of stock in the East Jordan Irrigation Company. The State Engineer approved the change application by Memorandum Decision dated March 5, 1990.

A petition for reconsideration was received from protestant East Jordan Irrigation Company on March 23, 1990. The petition states that the Irrigation Company owns the water rights and approval of the change application would impair these rights. It also claims the change would subject the Company to additional damage liability. Furthermore, East Jordan Irrigation Company claims the State Engineer's position on allowing change applications filed by shareholders threatens the existence of irrigation companies.

The applicant also submitted a petition for reconsideration on March 26, 1990. In its petition the applicant alleges that the State Engineer did not consider the return flows during the nonirrigation season when all discharged treated wastewater reaches Utah Lake.

The State Engineer granted both petitions and on April 12, 1990, a further hearing was held in Salt Lake City, Utah. The applicant's consulting engineer testified that published technical reports indicate that seepage from irrigated lawns and gardens is one-third of the total water applied. This seepage represents return flow to Utah Lake. Also, the consultant presented data to demonstrate that a significant percent of the water supplied by the applicant for municipal use returns to its wastewater treatment plant and then to Utah Lake via Beer Creek. Finally, the engineer suggested that the State Engineer should consider allocating some water to the East Jordan Irrigation company for seepage losses in its canal to compensate for the water removed under the change application.

Legal counsel for protestant East Jordan Irrigation Company reiterated th previously submitted petition for reconsideration. She emphasized that sh did not believe Payson City Corporation has the authority to file the chang application.

The State Engineer has reviewed the petitions for reconsideration and ha performed additional investigations. His position and conclusions are a follows:

a. It is still the opinion of the State Engineer that ownership of shares of stock in an irrigation company entitles the stockholder to divert and use water; consequently, a stockholder meets the criteria of Section 73-3-3, Utah Code Annotated, 1953, which allows "any person entitled to the use of water" to file a change application.

b. The State Engineer does not believe that shareholders receiving water from the East Jordan Canal will have their water entitlements diminished due to less water being turned into the Canal (under implementation of the change application), even though, conveyance losses will remain substantially the same. Reasons for this position were stated in Conclusion f of the Memorandum Decision dated March 5, 1990. Also, a seepage study performed by the U.S. Geological Survey showed that the net loss in the East Jordan Canal from near its head to near its terminus was only 4.0 cfs.

c. Further consideration has been given to the issue of return flows and the State Engineer acknowledges that some allowance can be given to the applicant. In order to calculate return flows and allowable diversions the State Engineer has used the following criteria:

   i. The average irrigation season for southern Utah Valley is approximately April 15 through October 31. Water use data indicates that the applicant delivers 25 percent of its total annual supply during the period of November 1 to April 14. Assuming that all the water delivered during this interval is used indoors, then the quantity conveyed to the wastewater treatment plant can be considered as return flow to Utah Lake. Wastewater return data shows that 70 percent of the water supplied during the nonirrigation season returns to the wastewater treatment plant.

   ii. It is reasonable to assume that the amount of water used inside during the irrigation season is essentially the same as during the nonirrigation season, i.e., 25 percent of the total annual municipal supply, and 70 percent of this is returned to the wastewater treatment plant. Also, from a review of the Beer Creek (aka Duck Creek or Benjamin Slough) system the State Engineer believes that 50 percent of the wastewater treated during the irrigation season returns to Utah Lake.

   iii. From criteria i and ii, the amount of water available for outside use, or irrigation, is 50 percent of the total annual use. Available studies suggest that ground-water recharge as seepage from irrigated lawns and gardens is 30 percent of the applied irrigation water. This seepage will be viewed as return flow to Utah Lake through underground flow.

d. Using the above criteria, an allowed diversion of 114 acre-feet during the irrigation season and 38 acre-feet during the nonirrigation season, or a total annual diversion of 152 acre-feet, will assure that the hereafter depletion from municipal use will not exceed the heretofore depletion of 89.8 acre-feet from irrigation use (0.25 x 152 x 0.3 + 0.25 x 152 x 0.3 + 0.25 x 152 x 0.7 x 0.5 - 0.5 x 152 x 0.7 = 89.3).

It is, therefore, ORDERED and Change Application Number 51-6055 (a14510) is hereby APPROVED as provided for in the Memorandum Decision dated March 5, 1990, and said decision shall remain intact with the exceptions that Condition Number two shall be DELETED and Condition Numbers one, four and five shall be AMENDED to read as follows:

1. Diversion of water under the change application, represented by the ownership of 38.5 shares of stock in the East Jordan Irrigation Company, shall not exceed 114 acre-feet during the period of April 15 to October 31 and is limited to 38 acre-feet from November 1 to April 14. Furthermore, the applicant shall maintain ownership of the 38.5 shares, pay its assessment to the East Jordan Irrigation Company, and meet any other obligations it may incur as a shareholder in the Company.

4. Up to 96.52 acre-feet, when necessitated by demand, shall be released from Utah Lake by the Utah Lake and Jordan River Commissioner to flow to the lower reaches of the Jordan River as compensation for loss of return flow from heretofore irrigation.

5. The Utah Lake and Jordan River Commissioner shall reduce the diversion into the East Jordan Canal by 186.34 acre-feet and the rate of diversion by 0.655 cfs. Furthermore, the irrigated acreage under the East Jordan Irrigation Company shall be reduced by 37.27 acres.

This Decision is subject to the provisions of Rule R625-6-18 of the Divisio of Water Rights and to Sections 63-46b-14 and 73-3-14 of the Utah Code whic provide for the filing of an appeal with the appropriate District Court. court appeal shall be filed within 30 days after the date of this Decision.

Dated this 9th day of July, 1990.

Robert L. Morgan

Robert L. Morgan, P.E.
State Engineer

RLM:EDF:ap

Mailed a copy of the foregoing Memorandum of Reconsideration this 9th day of July, 1990, to:

Payson City Corporation
439 West Utah Avenue
Payson, UT 84651

Dave McMullin, Attorney
Payson City Center
P.O. Box 176
Payson, UT 84651

Salt Lake City Corporation
c/o Ray L. Montgomery, Attorney
Law Department, Suite 505A
Salt Lake City and County Building
451 South State Street
Salt Lake City, UT 84111

David B. Gardner, P.E.
1611 East Water Lane
Sandy, UT 84092

East Jordan Irrigation Company
8565 South State Street
Sandy, UT 84070

Fabian and Clendenin
c/o Denise Dragoo, Attorney
P.O. Box 510210
Salt Lake City, UT 84151

Provo River Water Users Association
c/o Joseph Novak, Attorney
10 Exchange Place
P.O. Box 45000
Salt Lake City, UT 84145

By: ______________________
Robin Campbell, Secretary

APPLICATION FOR PERMANENT CHANGE OF WATER

RECEIVED
MAR 24 1989

STATE OF UTAH

Rec. by [illegible]
Fee Paid $ 375.00
Receipt # [illegible]
Microfilmed
Roll #

For the purpose of obtaining permission to make a permanent change of water in the State of Utah, application is hereby made to the State Engineer, based upon the following showing of facts, submitted in accordance with the requirements of Section 73-3-3 Utah Code Annotated 1953, as amended.

CHANGE APPLICATION NO. a15002 WATER RIGHT NUMBER 59-5268

Proposed changes: point of diversion [X], place of use [X], nature of use [ ].

1. **NAME:** East Jordan Irrigation Company
ADDRESS: 8565 South State Street Sandy, UT 84070

2. **PRIORITY OF CHANGE:** **FILING DATE:**

3. **RIGHT EVIDENCED BY:** Morse Decree, Civil 2861; Water Right No. 57-7637

4. **FLOW:** 170.0 cfs
170 cfs, Apr. 1 - Oct. 31, for irrigation.
10 cfs, Nov. 1 - Mar. 31, for domestic purposes.

5. **SOURCE:** Utah Lake and Jordan River, tributary to Great Salt Lake

COUNTY: Utah and Salt Lake

7. **POINT(S) OF DIVERSION:**
(1) N 120 ft. E 1950 ft. from W¼ corner, Section 26, T4S, R1W, SLBM
Diverting Works: Turner Dam Source: Jordan River
(2) S 1282 ft. W 17 ft. from N¼ corner, Section 25, T5S, R1W, SLBM
Diverting Works: Utah Lake Dam Source: Utah Lake

8. **POINT OF REDIVERSION:**
(1) N 120 ft. E 1950 ft. from W¼ corner, Section 26, T4S, R1W, SLBM
Diverting Works: Turner Dam Source: Jordan River

9. **NATURE OF USE:**
IRRIGATION: Total: 16000.00 acres
PERIOD OF USE: April 1 to October 31

10. **PLACE OF USE:** see explanatory

11. **RESERVOIR STORAGE:**
PERIOD OF USE: January 1 to December 31

Storage from January 1 to December 31, inclusive, in Utah Lake
Innundating 94311.0 acres, with a maximum capacity of 870056.000 acre-feet,
located in: Utah County

NORTH-EAST¼		NORTH-WEST¼		SOUTH-WEST¼		SOUTH-EAST¼
NE NW SW SE		NE NW SW SE		NE NW SW SE		NE NW SW SE

Continued on Next Page

EXPLANATORY

Point of diversion Number 1 on the Jordan River is the head of the East Jordan Canal and is also the point of rediversion for water released from Utah Lake. Point of diversion No. 2 is the old Utah Lake Outlet Dam. Water has been used within the service area of the East Jordan Irrigation Company.

Area inundated and storage capacity for Utah Lake are taken from Utah Lake Area and Capacity Tables, U.S. Bureau of Reclamation, October 28, 1963. These figures are based on the new compromise level, which is 4489.045 ft.

THE FOLLOWING CHANGES ARE PROPOSED

12. **FLOW:** 10000.0 acre-feet REMAINING WATER: Same as HERETOFORE

13. **SOURCE:** Utah Lake and Jordan River, tributary to Great Salt Lake

14. **COUNTY:** Utah and Salt Lake COMMON DESCRIPTION: Utah Lake and Jordan Narrows

15. **POINT(S) OF DIVERSION:** Changed as follows:
    (1) S 330 ft. E 2300 ft. from W¼ corner, Section 26, T4S, R1W, SLBM
    Diverting Works: SLCWCD Pump Station Source: Jordan River
    (2) S 1805 ft. W 485 ft. from N¼ corner, Section 25, T5S, R1W, SLBM
    Diverting Works: Utah Lake Outlet Dam Source: Utah Lake

16. **POINT OF REDIVERSION:**
    (1) S 330 ft. E 2300 ft. from W¼ corner, Section 26, T4S, R1W, SLBM
    Diverting Works: SLCWCD Pump Station Source: Jordan River

17. **PLACE OF USE:** Changed as follows:

	NORTH-EAST¼				NORTH-WEST¼				SOUTH-WEST¼				SOUTH-EAST¼			
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE
Sec 29, T2S, R1W, SLBM	X:	X:	X:	X	X:	X:	X:	X	X:	X:	X:	X	X:	X:	X:	X
Sec 30, T2S, R1W, SLBM	X:	X:	X:	X	X:	X:	X:	X	X:	X:	X:	X	X:	X:	X:	X
Sec 31, T2S, R1W, SLBM	X:	X:	X:	X	X:	X:	X:	X	X:	X:	X:	X	X:	X:	X:	X
Sec 32, T2S, R1W, SLBM	X:	X:	X:	X	X:	X:	X:	X	X:	X:	X:	X	X:	X:	X:	X
Sec 4, T3S, R1W, SLBM	X:	X:	X:	X	X:	X:	X:	X	X:	X:	X:	X	X:	X:	X:	X
Sec 5, T3S, R1W, SLBM	X:	X:	X:	X	X:	X:	X:	X	X:	X:	X:	X	X:	X:	X:	X
Sec 6, T3S, R1W, SLBM	X:	X:	X:	X	X:	X:	X:	X	X:	X:	X:	X	X:	X:	X:	X
Sec 8, T3S, R1W, SLBM	X:	X:	X:	X	X:	X:	X:	X	X:	X:	X:	X	X:	X:	X:	X
Sec 9, T3S, R1W, SLBM	X:	X:	X:	X	X:	X:	X:	X	X:	X:	X:	X	X:	X:	X:	X
Sec 16, T3S, R1W, SLBM	X:	X:	X:	X	X:	X:	X:	X	X:	X:	X:	X	X:	X:	X:	X
Sec 17, T3S, R1W, SLBM	X:	X:	X:	X	X:	X:	X:	X	X:	X:	X:	X	X:	X:	X:	X
Sec 19, T3S, R1W, SLBM	X:	X:	X:	X	X:	X:	X:	X	X:	X:	X:	X	X:	X:	X:	X
Sec 20, T3S, R1W, SLBM	X:	X:	X:	X	X:	X:	X:	X	X:	X:	X:	X	X:	X:	X:	X
Sec 21, T3S, R1W, SLBM	X:	X:	X:	X	X:	X:	X:	X	X:	X:	X:	X	X:	X:	X:	X
Sec 28, T3S, R1W, SLBM	X:	X:	X:	X	X:	X:	X:	X	X:	X:	X:	X	X:	X:	X:	X
Sec 29, T3S, R1W, SLBM	X:	X:	X:	X	X:	X:	X:	X	X:	X:	X:	X	X:	X:	X:	X
Sec 30, T3S, R1W, SLBM	X:	X:	X:	X	X:	X:	X:	X	X:	X:	X:	X	X:	X:	X:	X
Sec 31, T3S, R1W, SLBM	X:	X:	X:	X	X:	X:	X:	X	X:	X:	X:	X	X:	X:	X:	X
Sec 32, T3S, R1W, SLBM	X:	X:	X:	X	X:	X:	X:	X	X:	X:	X:	X	X:	X:	X:	X

Continued on Next Page

Sec 4, T4S, R1W, SLBM	X: X: X: X	X: X: X: X	X: X: X: X	X: X: X: X
Sec 5, T4S, R1W, SLBM	X: X: X: X	X: X: X: X	X: X: X: X	X: X: X: X
Sec 6, T4S, R1W, SLBM	X: X: X: X	X: X: X: X	X: X: X: X	X: X: X: X
Sec 8, T4S, R1W, SLBM	X: X: X: X	X: X: X: X	X: X: X: X	X: X: X: X
Sec 9, T4S, R1W, SLBM	X: X: X: X	X: X: X: X	X: X: X: X	X: X: X: X
Sec 10, T4S, R1W, SLBM	X: X: X: X	X: X: X: X	X: X: X: X	X: X: X: X
Sec 15, T4S, R1W, SLBM	X: X: X: X	X: X: X: X	X: X: X: X	X: X: X: X
Sec 26, T4S, R1W, SLBM	X: X: X: X	X: X: X: X	X: X: X: X	X: X: X: X
Sec 35, T4S, R1W, SLBM	X: X: X: X	X: X: X: X	X: X: X: X	X: X: X: X
Sec 1, T5S, R1W, SLBM	X: X: X: X	X: X: X: X	X: X: X: X	X: X: X: X
Sec 2, T5S, R1W, SLBM	X: X: X: X	X: X: X: X	X: X: X: X	X: X: X: X
Sec 14, T5S, R1W, SLBM	X: X: X: X	X: X: X: X	X: X: X: X	X: X: X: X
Sec 15, T5S, R1W, SLBM	X: X: X: X	X: X: X: X	X: X: X: X	X: X: X: X
Sec 22, T5S, R1W, SLBM	X: X: X: X	X: X: X: X	X: X: X: X	X: X: X: X
Sec 23, T5S, R1W, SLBM	X: X: X: X	X: X: X: X	X: X: X: X	X: X: X: X
Sec 26, T5S, R1W, SLBM	X: X: X: X	X: X: X: X	X: X: X: X	X: X: X: X
Sec 27, T5S, R1W, SLBM	X: X: X: X	X: X: X: X	X: X: X: X	X: X: X: X

18. **NATURE OF USE:** Same as HERETOFORE
    IRRIGATION: Total: 7200.00 acres
        PERIOD OF USE: April 1 to October 31

19. **RESERVOIR STORAGE:** Same as HERETOFORE
        PERIOD OF USE: January 1 to December 31

Storage from January 1 to December 31, inclusive, in Utah Lake
Innundating 94311.0 acres, with a maximum capacity of 870056.000 acre-feet,

located in: Utah County	NORTH-EAST¼	NORTH-WEST¼	SOUTH-WEST¼	SOUTH-EAST¼
	NE NW SW SE	NE NW SW SE	NE NW SW SE	NE NW SW SE

EXPLANATORY

This change application is being filed in behalf of the Salt Lake County Water Conservancy District (SLCWCD) based on 2,000 shares owned or being purchased by SLCWCD (A final list of the stock certificate numbers will be provided at a later date). It is anticipated that, subject to approval of this and related change applications, the SLCWCD will transfer title of these shares of stock to a new irrigation company, the Welby and Jacob Water Users Company, in exchange for all the shares of stock in the Welby and Jacob districts of the Provo Reservoir Water Users Co.(PRWUC). SLCWCD will then use the water available under its ownership in the PRWUC for municipal purposes and in return will agree to divert and deliver Welby Jacob Water Users Company water represented by this change application into the SLCWCD pump station on the Jordan River to be pumped to the Welby and Jacob branches of the Provo Reservoir Canal for use by the Welby Jacob Water Users Company.

For this change application a share in the East Jordan Irrigation Company has been evaluated at a net yield of 5.0 acre-feet. Therefore, 2,000 shares equal 10,000 acre feet during the irrigation season (April 1 to October 31.) This evaluation is based upon the report of Dr. David W. Eckhoff (see copy attached).

Continued on Next Page

It is anticipated that approval of this change application will not decrease the flows returning to the Jordan River system under historical use practices. A recent study by the USGS (Seepage Study of Six Canals in Salt Lake County, Utah, 1982-83 by L.R. Herbert, R.W. Cruff, and K.M. Waddell, U.S. Geological Survey, 1985, Technical Publication No. 82), showed that the Welby branch of Provo Reservoir Canal had the highest seepage losses of any canal monitored in Salt Lake County. The higher quality Provo River water being acquired by SLCWCD will also return to the Jordan River system through its use for municipal or outside irrigation purposes within the boundaries of the SLCWCD, or through continued delivery of Provo River water to the Welby and Jacob branches of the Provo Reservoir Canal by SLCWCD in lieu of incurring operating costs at its Jordan River Pump Station.

Hereafter, point of diversion No. 1 on the Jordan River will be The Salt Lake County Water Conservancy District Jordan River Narrows Pump Station and is also the point of rediversion of water released from Utah Lake. Point of diversion Number 2 is the intersection of the Jordan River and the Utah Lake Outlet (Dam) constructed in 1985, as provided by the new Compromise Judgement, Civil Number 64770, Utah County. Water will be released from Utah Lake either through the Utah Lake Pumping Plant or the Utah Lake Outlet.

The undersigned hereby acknowledges that even though he/she may have been assisted in the preparation of the above-numbered application through the courtesy of the employees of the State Engineer's Office, all responsibility for the accuracy of the information contained therein, at the time of filing, rests with the applicant.

Signature of Applicant

STATE ENGINEER'S ENDORSEMENT

CHANGE APPLICATION NUMBER: a15002 WATER RIGHT NUMBER: 59 - 5268

1. March 24, 1989 Change Application received by WES.

2. March 24, 1989 Priority of Change Application.

3. March 28, 1989 Application reviewed and approved for advertising by EDF.
July 6, 1989 Publication began in Deseret News.
August 23, 1989 Publication completed and verified by LK.

4. August 20, 1989 End of protest period.
Application protested: NO

5. October 6, 1989 Application designated for APPROVAL by EDF and KLJ.

6. Comments:

Conditions:
This application is hereby APPROVED by Memorandum Decision, dated October 6, 1989, subject to prior rights and the following conditions:

a. Actual construction work necessitated by proposed change shall be diligently prosecuted to completion.
b. Proof of change shall be submitted to the State Engineer's Office by November 30, 1992.

Robert L. Morgan
Robert L. Morgan, P.E.
State Engineer

Time for making Proof of Change extended to ____________________

Proof submitted ________________

EXHIBIT "H"

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF CHANGE APPLICATION)
) MEMORANDUM DECISION
NUMBER 59-5268 (a15002))

Change Application Number 59-5268 (a15002) was filed by the East Jordan Irrigation Company, on behalf of the Salt Lake County Water Conservancy District (District) for the proposed Welby Jacob Exchange based on the District's acquiring 2000 shares of stock, to change the point of diversion and place of use of a portion of 170.0 cubic feet per second (cfs) of water as evidenced by Water Right Number 57-7637, Morse Decree, Civil 2861.

Heretofore, the water has been diverted at the following two points of diversion: 1) Jordan River, North 120 feet and East 1950 feet from the W1/4 Corner of Section 26, T4S, R1W, SLB&M; 2) Utah Lake, South 1282 feet and West 17 feet from the N1/4 Corner of Section 25, T5S, R1W, SLB&M. The application states the water has been used from April 1 to October 31 for the irrigation of 16,000.00 acres of land. The water has been stored year-round in Utah Lake.

Hereafter, it is proposed to divert 10,000.0 acre-feet of water from two points of diversion: 1) Jordan River, South 330 feet and East 2300 feet from the W1/4 Corner of Section 26, T4S, R1W, SLB&M (Salt Lake County Water Conservancy District Pump Station); 2) Utah Lake, South 1805 feet and West 485 feet from the N1/4 Corner of Section 25, T5S, R1W, SLB&M. The water is to be used for the irrigation purposes of 7200 acres of land within the Welby and Jacob districts of the Provo Reservoir Water Users Company. The remaining water will be used as heretofore.

The change application was advertised in the Deseret News, Lehi Free Press, and the Daily Herald from July 6, 1989 to July 20, 1989, and no protests were received. Formal proceedings pursuant to Section 63-46b-4(3) of the Utah Administrative Procedures Act were requested with the processing of this application but the request was later withdrawn and the proceedings are designated as informal proceedings.

Although this application was not protested, the State Engineer believes that because of the magnitude of this and other related change applications, there are several issues which need to be examined. In evaluating this type of change application, the State Engineer believes that he must examine both the historical and proposed diversion and depletion of water. This is to insure that no enlargement of the right is made and that existing water rights are not impaired as a result of this change.

Under the proposed Welby Jacob Exchange, of which this application is part, the District has entered into an agreement to purchase stock of the Provo Reservoir Water Users Company which serves the Welby and Jacob districts. The Welby and Jacob water has been delivered from the Provo River through the Provo Reservoir Canal and used to irrigate 7200 acres of land on the west side of the Jordan River in Utah and Salt Lake Counties. The water hereafter, will be used for municipal purposes within the service area of the District. The water currently delivered to the Welby and Jacob districts is covered under change application numbers 55-7899 (a14709), 35-8739 (a15038), and 35-8740 (a15039). In exchange for the waters of the Welby and Jacob districts the District has acquired shares of stock or portions of water rights from six companies which hold water rights in Utah Lake and Jordan River, and will deliver 40,000 acre-feet annually of Utah Lake and Jordan River water to the Welby and Jacob districts to replace their Provo River water to be used for the irrigation of 7200 acres. Such replacement water is covered by change application numbers 59-5268 (a15002), 59-5269 (a15003), 59-5270 (a15004), 59-5271 (a15005), 59-5272 (a15006), 59-5273, (a15007) and 59-5722 (a15015).

In the "Proposed Determination of Water Rights in Utah Lake and Jordan River Drainage Area, Salt Lake County, West Division" (Proposed Determination), the State Engineer has recommended an irrigation duty of 5.0 acre-feet per acre and this duty appears reasonable for those lands located east of the Jordan River. This figure does not include potential conveyance losses for canals over one mile in length and such losses are to be determined in a supplemental report to the court in conjunction with the general adjudication proceedings. Since the potential conveyance losses have not been finalized, the State Engineer is using 5.0 acre-feet per acre in evaluating this change application.

In reviewing Change Application Number 59-5268 (a15002) and the underlying water right (57-7637), there appears to be some uncertainty as to the number of acres irrigated under the East Jordan Irrigation Company rights. On the file for Water Right Number 57-7637 is a Water User's Claim, signed June 17, 1969. However, there are several discrepancies with this claim and in an effort to resolve this issue, David W. Eckhoff, Ph. D., P.E., prepared a report entitled "Quantification of an Acre Foot per share Value East Jordan Irrigation Company", dated February, 1989. After reviewing data contained in that report, it appears that the best determination of the irrigated acreage and the evaluation of a share of stock can be determined from considering the primary service area. Within the primary service area, there are approximately 6684.18 acres supplied water under 6904.5 shares. There are 10,000 shares of stock outstanding in the Company. Salt Lake City controls 2061.0 shares, Union-Jordan Irrigation Company controls 778.5 shares and Cahoon and Maxfield Irrigation Company controls 256.0 shares. Assuming the water deliveries and irrigated acreage per share is similar to that of the primary service area, which from the data appears to be the case, a share of stock would equate to approximately 0.968 acres.

The District has acquired 1639.5 shares of stock in the East Jordan Irrigation Company for the proposed Welby Jacob Exchange. Based on an irrigation duty of 5.0 acre-feet per acre and a share of stock being equal to 0.968 acres, a share of stock would yield approximately 4.84 acre-feet per share. Therefore, the 1639.5 shares acquired by the District would potentially supply approximately 7935.18 acre-feet annually, limited to the irrigation requirements of 1587.04 acres. The maximum diversion rate under this change would be 27.87 cfs. This diversion rate is derived by taking the number of shares covered by this change, divided by the total number of shares outstanding in the East Jordan Irrigation Company, times the original diversion rate for Water Right Number 57-7637 (1639.5/10,000 x 170 = 27.87). The State Engineer realizes that the District may have an interest in non-irrigation season uses by virtue of its ownership of stock, however, since the proposed change is for irrigation purposes, these non-irrigation season uses have not been included in the quantification of this change application.

The State Engineer has conducted a review of the potential effects of this and related change applications on other existing water rights. In examining the historical diversions and depletion of water, as compared to the conditions under the proposed water uses, it is the opinion of the State Engineer that based upon this review it does not appear that existing rights will be adversely impaired. This conclusion is based on the assumption that a portion of the water acquired from the Welby and Jacob districts to be used for municipal purposes will be returned to the Jordan River as effluent from sewage treatment plants or return flow from the irrigation of lawns and gardens and that the irrigation practices within the Welby and Jacob districts will be similar to the heretofore conditions. From this review, the State Engineer believes that the applicant should not be required to make releases of water to compensate for historical return flows to the lower Jordan River. It appears that there will not be any appreciable change in the water supply condition on the lower Jordan River as a result of this and related change applications.

It is , therefore, ORDERED and Change Application Number 59-5268 (a15002), is hereby APPROVED subject to prior rights and the following conditions:

1. The quantity of water that can be diverted under the change shall be limited to 4.84 acre-feet per share and based upon the 1639.5 shares acquired by the District, the diversion rate shall not exceed 27.87 cfs and the annual diversion shall not exceed 7935.18 acre-feet, limited to the irrigation requirements of 1,587.04 acres. Water Right Number 57-7637 shall be reduced to reflect this change. The District shall maintain ownership of the shares of stock upon which this change is based and shall keep them in good standing for this change to remain in effect.

2. No more water shall be diverted under the change application than would have been diverted under the original right for the number of shares of stock covered by this change.

3. The applicant shall install and maintain adequate measuring devices to measure all water diverted under this right. Such devices shall be made available for inspection by the State Engineer or River Commissioner at all reasonable times as may be required to insure proper distribution of water under this change. The total annual quantity of water diverted under this change application shall be

reported by the Utah Lake and Jordan River Commissioner in his annual report to the State Engineer. The applicant shall pay all costs and expenses of the Commissioner incurred for the administration and distribution of water delivered under this change application.

4. The irrigated acreage served by the East Jordan Irrigation Company shall be reduced to reflect that water diverted under this change application and when proof of change is submitted the Company shall submit maps identifying those lands no longer served.

5. In approving this change application and all other change applications covering the total Welby Jacob Exchange Project, the State Engineer has considered and evaluated them as an entire project, as set forth in the applications. If in the implementation of this project, modifications are made which, in the opinion of the State Engineer could adversely affect other vested water rights, the State Engineer retains jurisdiction to reconsider the conditions set forth herein.

It is not the intention of the State Engineer in evaluating various elements of the underlying rights to adjudicate the extent of these rights, but rather to provide sufficient definition of the rights to assure that other vested rights are not impaired by the change and/or no enlargement occurs. If, in a subsequent action, the court adjudicates that this right is entitled to either more or less water, the State Engineer will adjust the figures accordingly.

This Decision is subject to the provisions of Rule R625-6-17 of the Division of Water Rights and to Sections 63-46b-13 and 73-3-14 of the Utah Code Annotated, 1953, which provide for filing either a Request for Reconsideration with the State Engineer, or an appeal with the appropriate District Court. A Request for Reconsideration must be filed with the State Engineer within 20 days of the date of this Decision. However, a Request for Reconsideration is not a prerequisite to filing a court appeal. A court appeal must be filed within 30 days after the date of this Decision, or if a Request for Reconsideration has been filed, within 30 days after the date the Request for Reconsideration is denied. A Request for Reconsideration is considered denied when no action is taken 20 days after the Request is filed.

Dated this 6th day of October, 1989.

Robert L. Morgan
Robert L. Morgan, P.E., State Engineer

RLM:rc

Mailed a copy of the foregoing Memorandum Decision this 6th day of October, 1989 to:

East Jordan Irrigation Company
8565 South State Street
Salt Lake City, UT 84070

Utah Lake and Jordan River Commissioner
1611 East Waters Lane
Sandy, UT 84093

Salt Lake County Water Conservancy District
8215 South 1300 West
West Jordan, UT 84088

Parsons, Behle & Latimer
c/o Lee Kapaloski
P. O. Box 11898
Salt Lake City, UT 84147-0898

Eckhoff, Watson and Preator Engineering
c/o David W. Eckhoff
1121 East 3900 South
Park View Bldg. C Suite 100
Salt Lake City, UT 84124

By: Robin Campbell
Robin Campbell, Secretary

Tab B

DISTRICT COURT OF UTAH COUNTY,

STATE OF UTAH

- - -

EAST JORDAN IRRIGATION COMPANY, et al., Plaintiffs, vs. ROBERT L. MORGAN, et al., Defendants.	Case No. 900400611 RULING

This matter comes before the Court, under Rule 4-501, on the joint motion of plaintiffs seeking summary judgment and on the joint motion of defendants seeking partial summary judgment. The Court has reviewed the file, considered the memoranda of counsel and the stipulated statement of facts, entertained argument of counsel, and upon being advised in the premises, now makes the following:

RULING

1. The said joint motion of plaintiffs seeking summary judgment is denied.

2. The said joint motion of defendants seeking partial summary judgment is granted for the following reasons:

(a) The Court is persuaded that as a matter of law, in the absence of a specific restriction approved by the stockholders, the owner of shares of stock in a non-profit mutual water company has the legal right to seek to change the nature of use and/or the point of diversion of the water represented by such shares of stock and may lawfully file a change application for such purpose with or without the consent or approval of the water company, when such proposed change involves the removal of water beyond the distribution system of the company, irrespective of the fact that the initial certificate of appropriation or decreed right may stand in the name of the water company.

(b) Such a change application is within the jurisdiction of the State Engineer, as suggested in Syrett vs. Tropic and East Fork Irrigation Company, 97 Ut. 56, 89 P.2d 474, since the rights of other independent appropriators might be involved.

Dated this 16th day of December 1991.

BY THE COURT:

Cullen Y. Christensen

Cullen Y. Christensen, Judge

Tab C

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

EAST JORDAN IRRIGATION COMPANY, PROVO RIVER WATER USERS' ASSOCIATION, SALT LAKE CITY CORPOR-, ATION,

Plaintiffs,

v.

ROBERT L. MORGAN, State Engineer of Utah, and PAYSON CITY CORPORATION,

Defendants.

FINAL JUDGMENT

Civil No. 900400611AP

Judge Cullen Y. Christensen

This matter came before this Court on plaintiffs' Motion for Summary Judgment and defendants' Cross-Motion for Partial Summary Judgment pursuant to Rule 56, Utah Rules of Civil Procedure, and Stipulation dated February 14, 1992, and having reviewed the pleadings, supporting memorandum, and being fully advised in the premises

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The Complaint is amended to delete the allegations of paragraph 16, without prejudice, so that this Court's prior ruling of December 10, 1991 will be dispositive of all issues in this case.

2. The Court finds as undisputed those facts set forth in a stipulation of the parties filed in this case entitled "Stipulated Statement of Facts in Connection with Plaintiff's Motion for Summary Judgment and Defendants' Cross-Motion for Summary Judgment" dated June 10, 1991.

3. Plaintiffs' Motion for Summary Judgment is denied.

4. Defendants' Motion for Summary Judgment is granted; accordingly, the Complaint is dismissed with prejudice.

DATED this 24 day of Feb, 1992.

BY THE COURT:

Cullen Y Christensen
Cullen Y. Christensen
Fourth District Court Judge

APPROVED AS TO FORM:

Stanford B. Owen
Denise A. Dragoo
Sandra K. Allen
Attorneys for East Jordan
Irrigation Company

Marc T Wangsgard
Joseph Novak
Marc T Wangsgard
Attorneys for Provo River
Water Users' Association

Ray L. Montgomery

Ray L. Montgomery
Attorney for Salt Lake City
Corporation

Steve E. Clyde

Steven E. Clyde
Glen K. Vernon
Attorneys for Payson City

Michael M. Quealy

R. Paul Van Dam
Michael M. Quealy
John H. Mabey, Jr.
Attorneys for Robert L.
Morgan, State Engineer

012892c

Tab D

IN THE DISTRICT ~~COURT~~ OF THE THIRD JUDICIAL DISTRICT, STATE
OF UTAH, IN AND FOR THE COUNTY OF SALT LAKE.

Salt Lake City, a Municipal Corp., et al.,
Plaintiffs,
v.
Salt Lake City Water & Electrical Power Co., a Corporation, et al.,
Defendants.
Hyrum Bennion, et al.,
Intervenors
No. 2861

Jos. Geoghegan, Receiver of the Property of Salt Lake City Water & Electrical Power Co., a Corporation,
Plaintiff,
v.
Salt Lake City, a Municipal Corporation,
Defendant.
No. 3448

Jos. Geoghegan, Receiver of the Property of Salt Lake City Water & Electrical Power Company, a Corporation,
Plaintiff,
v.
Utah & Salt Lake Canal Company, a Corporation, et al.,
Defendants.
No. 3459

ORDERS AND DECREES OF
THE COURT.
Hon. C. W. Morse, Judge

**

(Title of Court and Cause.)

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

These three causes having been consolidated by the court, came on regularly for trial on the 14th day of January, A.D. 1901, and were tried together, upon the complaints and amended complaints of the several plaintiffs, the answers and cross-complaints of the several defendants and the replies thereto, the complaints of the intervenors, the answers to said complaints and the replies thereto, said trial extending till the 13th day of April, A.D. 1901; Messrs. Frank B. Stephens and Richards and Varian, appearing for the plaintiffs; Messrs. Lindsay R. Rogers, Ogden Hiles and W. L. Warner, appearing as attorneys for the defendants, Salt Lake City Water & Electrical Power Company, the Bingham Tunnel Company, Allan G. Lemson and Joseph Geoghegan

MICROFILMED

as receiver of the property of Salt Lake City Water and Electrical Power Company; Messrs. Rawlins, Thurman, Hurd and Wedgwood, appearing as attorneys for the East Jordan Irrigation Company; Messrs. Ferguson, Cannon and Tanner, appearing as attorneys for the South Jordan Canal Company, the Beckstead Irrigation Company, Louis R. Mousley, Rise Sophia Madsen and Johanna Sophia Hatt, Caroline Jensen, James Madsen, Margret Christine Madsen, Hyrum Bennion and Samuel R. Bennion, co-partners, doing business under the firm name of Bennion and Bennion, defendants, and for Hyrum Bennion, J.H. Bennion, Wilford Bennion, Arthur Bennion, Emma Lindsay, R.A. Sharp, Emma J. Bennion, Samuel O. Bennion, Parley Bennion, Mary Bennion, Roland Bennion, Minnie Bennion, Orson Bennion, Vincent Bennion, Mary Ann Bennion, Jennie Bennion, Effie Bennion, Adam Bennion, Henry Harker, Susannah Harker, Job Harker, Wm. Harker, Harriet Harker, Mabel Harker, Edna Harker, Benj. E. Harker, a minor, by Harriet Harker, his general guardian, Ephriam Harker, Heber Harker, Levi Harker, James Marsdon, Maria P. Harker, Angeline R. Spencer, Mary E. Calder, Ira Bennion, Samuel R. Bennion, Rachel Spencer, Geo. M. Spencer, Heber Bennion, and a co-partnership composed of Sam. R. Bennion and Hyrum Bennion, intervenors; Messrs. Brown and Henderson appearing as attorneys for the North Jordan Irrigation Company, Wm. Cooper, Jr., West Jordan Milling and Mercantile Company, Solon Richardson, Ludwig Christensen, James Peterson, Hyrum Beckstead, Albine Beckstead, David Egbert, Lafayette Egbert, John Egbert, and John Cabot; Messrs. James H. Moyle and D.H. Wells, Jr., appearing as attorneys for Utah Mattress and Manf. Co., John H. Bailey and Henry Dinwoodey; Mr. Daniel Harrington, appearing as attorney for Annie E. Neff; Messrs. Wilson and Smith, appearing as attorneys for John T. Wilson, Absalom W. Smith, James Blake, Chas. Blake, A.C. Lunnen, A.D. Lunnen, S. R. Wellington, Henry Osborne and John Neff; Messrs. Stewart and Stewart, appearing as attorneys for Sarah E. Stewart and South Jordan Milling Company; and Messrs. Bennett, Harkness, Howat, Sutherland and Van Cott, appearing as attorneys for the United States Mining Company; the court having heard the evidence and being fully advised in the premises, finds the following facts:

FIRST.

That the Jordan river is a natural stream of water, having its source in Utah County, Utah, at the northern end of Utah Lake, and being the only outlet thereof; that from its said source, it flows in a general northerly direction through said Utah County, and through a portion of Salt Lake County, Utah, and empties into Great Salt Lake; that the lands adjacent to its banks in Salt Lake County are capable of cultivation and irrigation, and by the use of these waters, have been redeemed from their barren state, and rendered fruitful and habitable by the parties to this action, and their predecessors in interest; that the lands so redeemed and made fruitful and habitable, lay on each side of said river, sloping downward towards it, and generally the trend of the adjacent lands and country is toward the river on either side, so that surplus, percolating and seepage waters from said lands, naturally find their way to said river; that the volume of water flowing in said river, varies one year with another, at different times in the same season; that from a point immediately below (north) of the old dam, the percolating and seepage waters from under ground sources, surface irrigation and springs begin to flow into the river channel, and so continue down and along the course of the river, to and past the lands of all the lower proprietors and claimants herein mentioned, which, in all ordinary seasons, create a continual and large and constant flow of running water, suitable and capable of being used for domestic, stock, power, and irrigation purposes, but the amount or volume thereof, at any point below said dam, cannot from the evidence, be specifically determined. That in the year 1850, Jos. Harker and others constructed a canal, and diverted water from the Jordan river at a point about 14 miles north of what is known as the old dam, for the purpose of irrigating their farms, and they and their grantees have ever since used thru said canal from the Jordan river, sufficient water to irrigate 200 acres of land.

The intervenors, Hiriam Bennion, W.H. Bennion, Wilford Bennion, Arthur Bennion, Emma Lindsay, R.A. Sharp, Emma J. Bennion, Jam. A. Bennion, Parley Bennion, Mary Bennion, Roland Bennion, Orson Bennion, Vincent Bennion, Mary Ann Bennion, Jennie Bennion, Minnie Bennion, Effie Bennion, Adam Bennion, Henry Harker, Susan Harker, Wm. Harker, Harriet Harker, James Harsen, Job Harker* Ephraim Harker, Heber Harker, Levi Harker**, Maria H. Cannon, Angeline P. Spencer, Mary B. Calder, Ira Bennion, Saml. R. Bennion, Rachel Spencer, Geo. M. Spencer, Heber Bennion, and a co-partnership composed of Saml. P. Bennion and Hirum Bennion, are now the owners of said land, and of the water rights accruing by virtue of such appropriation, diversion and use.

The quantity of water necessary to irrigate said land is 5 cubic feet per sec. of time. This canal was afterwards enlarged, as set forth in Finding 13, and is known as the Bennion and Bennion mill race. The water for use on lands under this canal is taken from the river below the points where the water used by the West Jordan Flouring mill, the Mattress Factory, the South Jordan Flouring mill, the Sandy Roller mills and the Galena mill is returned to the river.

bel Harker, Edna Harker, Benjamin . Harker
James rsdon

SECOND.

That in the spring of 1850, Archibald Gardner, assisted by the farmers owning farms in the vicinity, constructed a canal, which has since been known as the Gardner mill race, and diverted water from the Jordan River at a point about 10 miles north of what is known as the old dam, for the purpose of furnishing power for the operation of a flouring mill, and for the irrigation of the farms adjacent to the canal.

The defendant herein, the West Jordan Milling and Mercantile Company, as the successors in title and interest of the said Archibald Gardner, and all the persons who diverted water for the use of said mill; that the said mill was constructed and put in operation, in the year 1850, and the said predecessors in interest of the said defendant, West Jordan Milling and Mercantile Company, and the said defendant last named, has operated said mill from that time to the present, and for that purpose, the said defendant, the West Jordan Milling and Mercantile Company, and its predecessors in interest, have diverted from the waters of said river, continuously, whenever the interests of their business required it, 30 cubic feet of water per sec., measured at entrance of the pen stock, and that said use has been open, notorious, exclusive, adverse, subject only to the limitation and restrictions mentioned and set out herein; that when said mill was constructed, and since that time, it has been operated with two water wheels, known as Leffer turbine wheels, one thereof being what is known as the 23 inch wheel, the other what is known as the 26½ inch wheel; that the said mill is situated about one and a half miles north, and down the river on said mill race from the place where said water is diverted from the river.

That there has been used from the Jordan river thru said canal, from the year 1850 to the present time, water sufficient to irrigate 203.25 acres of land, which land is owned at the present time as follows:

John A. Egbert	15 acres
Albine Beckstead	31 acres
Hyrum Beckstead	22 acres
John R. Bailey and Henry Winwoodey	70 acres
W.L. Egbert	19-75/100 acres
D.A. Egbert	15 acres
Solon Richardson	30 acres
Ludwig Christensin and Js. Peterson	32-5/10 acres.

The quantity of water necessary to properly irrigate said land, is 5.5 cub. ft. per sec. of time.

That in the year 1855, a saw mill was built upon said mill race, which was afterwards changed to a woolen mill, and later to a Mattress Factory, which said Mattress Factory is now owned and operated by the defendant, Utah Mattress and Manf. Co., and the said Utah Mattress and Manf. Co. is the successor in title and interest of the persons who diverted water for the use of said mill and factory, and the said Utah Mattress and Manf. Co., and its predecessors in interest, have operated said factory and mill from the year 1851 to the present time, and for that purpose have diverted from the waters of said river continuously whenever the interest of their business required it, eleven cubic feet of water per second of time measured at the entrance to its pen stock, and that said use has been open, notorious, exclusive and diverse, subject only to the limitations and restrictions mentioned and set out herein.

That in the year 1853, the predecessors in interest of the defendant, the North Jordan Irrigation Company, extended the Gardiner mill race hereinbefore mentioned, from its then terminus immediately below the mill of the defendant, the West Jordan Milling and Mercantile Company, to the mill of the defendant, the Utah Mattress and Manf. Co., to a point at or near Taylorsville in Salt Lake County, and enlarged the said Gardiner mill race, and from time to time extended and enlarged said race and canal, up to the year 1881, when it was completed to its present size and capacity, and such extension has since been known as North Jordan Canal, and from the year 1853 continuously from that time down to the present, the said defendant, the North Jordan Irrigation Company, and its predecessors in interest, have used the same for the purpose of conveying water for irrigation, culinary and domestic purposes to the lands and homes of said predecessors in interest, and the stockholders of the said defendant, the North Jordan Irrigation Company. The head-gate of this canal is about one and one-half miles from the place where the Gardiner mill race takes it water from the Jordan river, and at the end of said mill race, and its capacity is one hundred twenty cubic ft. of water per sec. of time, and over 8000 acres of land are being irrigated each year, by water taken from the Jordan river, thru said Gardiner mill race, and into said canal thru its head-gate, and 10 cub. ft. of water per sec. has been used thru this canal during the winter season of each year for domestic and culinary purposes by the said predecessors, and the stockholders of said defendant last named. That from the commencement of the construction of the said North Jordan Canal in 1853, as aforesaid by the defendant, the North Jordan Irrigation Company, and its predecessors in interest, the work of enlarging and extending the said canal was continued with reasonable diligence to the year 1881 as aforesaid, to its present capacity. That the lands on which water has been, and is now being used for irrigation purposes, was, and is, without the application of water, dry, barren and arid lands, but with the application of water, are productive, and that water to the amount of said full capcity of said canal, is necessary during the irrigation season, for the proper irrigation and cultivation of said lands, and for the domestic and culinary uses of the stockholders of said defendant company, and that during eachand every year since the completion of said canal, the same has been used to convey water from the said Jordan river, to and upon lands requiring irrigation, and owned by said defendants, stockholders in severalty, for irrigation and domestic purposes.

THIRD.

That in the year 1858, Absalom W. Smith, Isaac M. Stewart, constructed a canal, and diverted water from the Jordan river at a point about 4 miles north from what is known as the old dam, for the purpose of irrigating their lands, and in 1865, a new and larger canal was constructed at the same place by them and others, and was used by such parties to convey water upon their lands for irrigation, culinary and domestic purposes until in 1873, when the Galena Canal was constructed at that point, as set forth in Finding 9.

FOURTH.

That in the year 1859, the Beckated Irrigation Company, constructed a canal, and diverted water from the Jordan river at a point about 5½ miles north from what is known as the old dam, and extended it from year to year, until in 1863, when it was completed to its present length, since which time, it has been used to convey water from the Jordan river to and upon the lands of the stockholders of said company, for irrigation, culinary and domestic purposes.

The quantity of land irrigated from this canal is 530 acres, and the waters required therefore, is 12 cub. ft. per sec. of time during the irrigation season, measured in the weirs in the lower bank of said canal, for waters used above the South Jordan Milling Company's mill; and in said canal at a point opposite said mill, for water used below said mill, and the amount of water used for domestic and culinary purposes during the balance of the year, is 4 cu. ft. per sec. of time.

FIFTH.

That in the year 1864, a canal known as the Mousley ditch was constructed, and water taken from the Jordan river at a point about 2½ miles north from the old dam to irrigate the lands now owned by Louis H. Mousley, Nisa C. Madsen, Johanna C. Hatt, Caroline Jensen, James Madsen and Margret C. Madsen. In all, amounting to 87.5 acres, and water has been taken from it for that purpose each season since. The quantity of water required to irrigate said land is 2 cu. ft. per sec. of time.

SIXTH.

That in the year 1870, the defendant, the South Jordan Canal Company commenced the construction of a canal and the diversion and use by its stockholders, of waters for irrigation and domestic purposes from the Jordan river at a point about 2 miles north from the old dam, and during the year 1870, 1871, 1872, 1873, 1874 and 1875, the work upon said canal was diligently prosecuted, and the said canal completed in the said year 1875 to its present size and capacity, namely, 142 cu. ft. of water per sec. of time, and that during each and every year since said completion, the same has been used to convey water from said Jordan river to and upon the lands requiring irrigation, and owned by said defendant stockholders in severalty, for irrigation and domestic purposes, and by means of said canal and the waters of said Jordan river, diverted thereby, about 9000 acres of said lands have been irrigated and cultivated, and redeemed from their natural barren condition, and that all of said 142 cu. ft. of water per sec, is necessary to properly irrigate said land, that during the winter season of each and every year, 10 cub. ft. of water per sec. has been continuously used by said stockholders of said company for domestic and culinary purposes.

SEVENTH.

That in the year 1872, Salt Lake County constructed a dam in the Jordan river at a point in Sec. 26, Tp. 4 S., Range 1, West, for the purpose of facilitating the diversion of water from the Jorden river for irrigation and other beneficial uses, which dam is known by the name of, and is referred to herein, as the "Old Dam".

In April, 1883, Salt Lake County, by deeds duly authorized by the County Court of said County, and regularly executed and delivered, transferred to the Utah and Salt Lake Canal Company, and North Jordan Irrigation Company, and South Jordan Canal Company, and East Jordan Irrigation Company, and Salt Lake City, each a 1/6 interest in the said dam, which deeds also purported to convey a 1/6 interest in the waters of the Jordan river, flowing at that point to said Salt Lake City, and each of said canal companies and purported to reserve a 1/6 interest in said dam and said waters.

Thereafter, to-wit, from the date of the execution and delivery of said deeds to the present time, the Salt Lake Canal Company, the North Jordan Irrigation Company, the South Jordan Canal Company, the East Jordan Irrigation Company, and Salt Lake City, have controlled, maintained, and used said dam, that said Salt Lake County never at any time diverted or used for any purpose, any of the waters of the Jordan river, and never claimed or asserted any right to the use thereof from then to the construction of said dam, and the making and delivery of said deeds, and ever since said year 1893, the plaintiffs and said defendants last named, subject to the rights of the owners of the Mousley ditch, the Beckstead ditch, the Cooper ditch, the Galena ditch, the Garderner mill race, and the Bennion ditch, have used during the irrigation season of each and every year all of the waters flowing in the said Jordan river, for beneficiary purposes, and said use of said waters of said river has been open, notorious, peaceable, continuous, and adverse, as against said Salt Lake County, and all of the defendants in this action, except when their use thereof was interrupted by the defendant, Salt Lake City Water and Electrical Power Company in the year 1900, as set forth in Finding 23.

EIGHTH.

That in the year 1870, some of the persons who afterwards became stockholders in the Utah and Salt Lake Canal Company, constructed a canal, and diverted water for irrigation, domestic and culinary purposes, from the Jordan river at the old dam, which canal was from year to year extended, until in 1882, when it was completed to its present size and capacity, by the Utah and Salt Lake Canal Company, which was incorporated in 1880, and said canal has been used ever since in conducting the water to the lands of its stockholders, and the same has been used by them for domestic and irrigation purposes, including the watering of livestock, and during the winter season of each year, 10 cu. ft. of water per sec. in said canal has been used continuously for domestic and culinary purposes by the stockholders of said company. The capacity of said canal is 246 cub ft. of water per sec. of time, and about 13,000 acres of land have been, and are irrigated by water from said canal, and have been thereby redeemed from their natural barren condition.

NINTH.

That in the year 1873, the predecessors in title and interest of the United State Mining Co., under an arrangement with the owners thereof, enlarged the canal mentioned in Finding 8, purchased a right of way therefor, and extended the same to the total length of about 10 miles to the Smelter and Mill owned by them, and appropriated therefor of the thereto fore unappropriated waters of the Jordan river, a sufficient quantity to supply and operate said smelter and mill, which were from that time on, operated by water power by the various owners thereof, and water diverted from the Jordan river, and conveyed thru said canal for that purpose. That the said canal has since been known as the Galena Canal.

The farmers who had theretofore conveyed water from the river to their lands thru the canal mentioned in Finding 3 thereafter conveyed the water for their use for irrigation, thru said Galena Canal.

That since the construction of the said canal, and the appropriation of water thereby, the title thereto, and the title to a right to use the waters carried thereby have been conveyed by the owners thereof, successivley with the conveyance of the land constituting the site of the Smelter and Mill aforesaid and by and thru such successive conveyances, the defendant, the United States Mining Company, has become the owners, and in the possession of the said site and Smelter and Mill thereon, and of the said canal and the waters carried thereby.

That in or about the year 1881, the then owners of the said canal and site, ceased to use the same for the purpose of supplying and operating the Smelter upon said site, and have never since said time, resumed the use thereof for any purpose, and that ever since the construction of said canal and until some time in the year 1897, the grantors and predecessors in interest of the said defendant continued to carry water thru the said canal from the said river for the use of, and to use the same for the purpose of operating and supplying the said Mills and works incident thereto, and for suc/h purpose, and whenever the interests of their business required it, appropriated and used 17 cu. ft. of water per sec. of time, measured at the pen stock of said mill.

That since some time in the year 1897, while the said mill has been idle, the same has been kept up, cared for and maintained, until since the commencement of this suit, when said mill was torn down, and removed, for the purpose of making place for new reduction works, and that since the year 1897, the said defendant and its grantors and its predecessors have expended large sums of money in repairing, caring for, and maintaining said canal, and have all the time claimed, and intended to resume and maintain the use of the said quantity of water at the said site.

That the following named persons and their predecessors in title and possession, have used water from the Jordan river for the purpose of irrigating their lands each year, some of these since 1866, and all of them since 1877, and have conducted the water for that purpose from the Galena Canal since its construction, being with the permission of the owners of said canal, to-wit:

James Blake -Chas. Blake	85 acres
A. E. Smith	70 acres
A.C. Lunnen, A.E. Lunnen & W.R. Wellington	35 acres
Henry Osborne	27 acres
Sarah L. Stewart	90 acres
John T. Wilson	15 acres

The quantity of water used by the said A.E. Smith, W.R. Wellington, A.C. Lunnen and A.E. Lunnen, James Blake and Charles Blake, collectively, for irrigation purposes, is 2.825 cu. ft. of water per sec. of time.

The quantity of water necessary to irrigate the Stewart tract of land is 1.4 cu. ft. of water per sec. of time, and the quantity of water necessary to irrigate the Osborne tract, is .24 cu. ft. per sec. of time, and the amount necessary to irrigate the Wilson tract, is .3 cu. ft. per sec. of time.

TENTH.

That in the year 1877, the defendant, the East Jordan Irrigation Company, commenced the construction of a canal and the diversion and use by its stockholders of water for irrigation and domestic purposes from the Jordan river at a point immediately south of the old dam, that such use of said water was continued during the year 1878,1879,1880,1881 and 1882. That the work of constructing said canal, was prosecuted and continued with reasonable diligence during each and all of said years, and in the year 1882, said canal was completed to its present size and capacity, to-wit, a capacity to carry 170 cu. ft. of water per sec. of time, and during each and every year since its completion, the same has been used to convey water from the said Jordan river and upon lands requiring irrigation, and owned by said defendant stockholders in severalty for irrigation and domestic purposes, and by means of said canals and the water of said Jordan river, diverted thereby, about 18,000 acres of said lands have been irrigated and cultivated, and redeemed from their natural barren condition, that during the winter season of each and every year since the construction of said canal, the stockholders of said defendant, have diverted and used for domestic and culinary purposes, 10 cu. ft. of water per sec., from said Jordan river.

ELEVENTH.

That in the year 1878, at a point about 8 miles north of the old dam, a canal was constructed for the purpose of appropriating water from the Jordan river, for power purposes, for use in the Flouring Mill, known as Sandy Roller Mills, and the water was diverted and appropriated from said river, and conducted thru said canal, to furnish power for said mill.

The defendant, Wm. Cooper Jr., is the present owner of said mill and mill race, and is the successor in interest and title of the parties who constructed said canal and appropriated said water, and he and his predecessors in title and interest have ever since conducted from the Jordan river thru said race, water for operating said mill, wherever the interests of their business required it, amounting to 23 cu. ft. per sec. of time, and said defendant, Wm. Cooper Jr., and his predecessors in title and interest, have used said water for power purposes, and for the purpose of operating said mill continuously as aforesaid, and during all that time have been in the open, notorious, exclusive, and adverse possession of such right, and have appropriated and used sufficient of the said waters of said river up to 23 cu. ft. per sec. of time, as needed and required, and as the demands of the business of the mill require, and that 23 cu. ft. of water per sec. of time is required and necessary to operate said mill.

That ever since said race was constructed the following persons have taken water from the Jordan river thru said race to and upon their lands for the purpose of irrigating the same, to-wit:

John Hoff.....70 acres
Annie [illegible] Hoff..30 acres
John T. Wilson......15 acres

and the quantity of water required during the irrigation season for such purposes is as follows:

Upon the John Hoff tract, 1.4 cu. ft. per sec. of time.
Upon the Annie [illegible] Hoff tract, 1.2 cu. ft. per sec. of time.
Upon the J.T. Wilson tract, .3 cu. ft. per sec. of time.

TWELFTH.

That in 1879, Salt Lake City commenced the construction of a canal, diverting water from the Jordan river, at a point where the water of the South Jordan Canal Company is diverted, and completed such canal to the city of Salt Lake, a distance of about twenty-nine miles, in 1882, and has ever since used it for conveying water to said city, for use by its inhabitants, for irrigation and municipal purposes. The capacity of this canal is [illegible] cu. ft. of water per sec. of time. In [illegible], a portion of the water conveyed thru said canal was exchanged by the city for Parley's Canyon Creek water, which was and is purer and better for domestic and culinary purposes, and, ever since, said water has been used, thru the waterworks system of Salt Lake City, for the domestic use of its inhabitants, for fire hydrants, sprinkling lawns and streets and other municipal purposes, and the remainder of water flowing thru said canal has been used by the city and its inhabitants for irrigation, sprinkling streets, flushing sewers and other municipal purposes, and all of said waters are necessary for said purpose.

That the water taken from the river by the city into its canal is taken at an elevation of 50 ft. lower than the point at which the East Jordan Irrigation Company takes its water, and if the city's water was taken from the river at a point where the East Jordan Irrigation Company diverts its water, it could be delivered in the city at an elevation 60 ft. above where it is delivered at present thru the city's canal. The city has had in contemplation the changing of the point of diversion of the water taken by it from the river thru its canal, to this higher level, in order to enable the city to exchange the same for waters from the Cottonwood creeks, and other mountain streams, which is purer and better for culinary and domestic purposes, and the city has already begun proceedings in the proper court to condemn a right of way for such purpose thru the East Jordan canal.

THIRTEENTH.

That in 1890, Hyrum Bennion and Saml. R. Bennion, partners as Bennion and Bennion, enlarged and extended the canal, mentioned in Finding One, and diverted and have ever since used water thru it from the Jordan river, for the purpose of furnishing power for the operation of a flouring mill. The quantity of water required for the operation of their mill is 40 cu. ft. per sec. of time, and such water together with the water used by the farmers adjacent to said canal, is taken from the river below where the waters used by the West Jordan flouring mill, the mattress factory, the South Jordan flouring mill, the Sandy Roller Mills and the Galena mill, are returned to the river.

That in dry seasons the flow of the Jordan river becomes insufficient to supply the needs of the several appropriators and users, as hereinbefore set forth, and in the year 1889, Salt Lake City, the Utah and Salt Lake Canal Company, the East Jordan Canal Company, and the North Jordan Canal and Irrigation Company, entered into an arrangement, by which they jointly dredged the bed of the Jordan river, and removed natural obstructions therein, which enabled them to draw the water from Utah Lake, thru the channel of said river at a level [illegible] lower than before such dredging; and during the year 1889, and 1890, the said city and canal and irrigation companies, constructed in the river at a point about three-quarters of a mile south and above the old dam, a new dam, to enable them to hold back and store the waters of the lake, for use when needed, the city and each of said canal and irrigation companies contributing equally to the cost and expense of such dredging, and of the construction of said new dam, which amounted to over ________________ thousand dollars, and its maintenance since.

That immediately thereafter the city and said companies commenced, by means of said dam, to hold back and store the waters in said Utah Lake, and in doing so caused certain lands lying and adjacent to the lake to be flooded, in consequence of which a series of suits were commenced by the farmers of Utah County, owning such lands, against said city and canal and irrigation companies, which finally resulted in an agreement of compromise entered into in the year 1885, by the terms of which the owners of said lands granted to the said city and canal and irrigation companies, the right, so far as their interests, or the flooding of their lands was concerned, to hold back and store the waters in the lake, until they should raise to a point 3 ft. and 3½ inches above low water mark, which point has since been known as "Compromise Point," and the exact location of which has been fixed and determined by judicial decisions. Said compromise agreement provided for the election annually by the parties thereto, of a board of five persons, who have since been known as Utah Lake Commissioners, under whose directions the rights granted by said agreement should be exercised by the said city and canal and irrigation companies.

That since 1885, to the present time, the said city and said canal and irrigation companies have openly, notoriously, continuously and adversely against all the world, maintained and used said Utah Lake as a reservoir and said dam as an impounding dam, to hold back and store the waters in the lake, when necessary to do so, in order to supply their needs during seasons of scarcity of water, and the said city and canal and irrigation companies have each contributed an equal share of all costs and expenses of all matters growing out of such joint enterprises. That said right of storage has been, since the year 1885, recognized and assented to by all the parties thereto, except the Salt Lake City Water and Electrical Power Company, as necessary to preserve and save the waters of the river for the uses of all appropriators, and said right of storage was and is necessary for such purposes.

That each year, during the early part of the irrigation season, the city and each of said canal and irrigation companies have taken from the river and conveyed thru their respective canals, water to the full capacity of such canals for the use of those entitled to use water therefrom. That as such seasons advanced and the water receded, the superintendents of the several canal and irrigation companies, and a representative of the city, would make a division of the waters so long as they could agree thereon, and later in the season when an accurate division would be called for by any of said companies, an engineer would be employed to measure the waters and divide the portion to which the city and each of said canal and irrigation companies were entitled, equally between them.

That in making such divisions, there has been allowed to flow down the channel of the river such quantity of water as would, with the accretions arising from the seepage or other sources, supply the necessities, as hereinbefore set forth, of the farms and mill upon the Bennion and Bennion mill race, the farms, mill and factory upon the Gardner mill race, the farms and mill upon the Galena Canal, the Beckstead Irrigation Company, the farms upon the Mousley Ditch, and the farms and mill upon the Cooper mill race.

That from and after the said city and said canal and irrigation companies constructed the impounding dam hereinbefore mentioned, and dredged the river, and commenced to impound the water hereinbefore set forth, in the year 1889, and continuously from thence hitherto, the said Salt Lake City, and the said Canal and Irrigation Companies, have each and all, conceded that the said Salt Lake City, and each of said Canal and Irrigation Companies were entitled to an equal amount of water in their several canals to be furnished and had at the head gates of each respectively, and that all of the efforts and practices of dividing the said water was intended by each and all thereof to effectuate that purpose and to furnish to each and all of said Canal and Irrigation Companies, and the said Salt Lake City, the said equal amount of water at their respective head gates so long as the water flowing in said river over and above what was sufficient and necessary for the prior appropriations and the mills and factories hereinbefore enumerated, did not exceed, when divided equally among them, the maximum capacity of said canals respectively as hereinbefore set forth. Each of said companies and said city, conceding to each an equal division of the waters remaining after said prior rights were supplied, to be furnished at their respective head gates, and that all practices and customs and divisions made, were for the purpose and object of effectuating such equal divions, and that any differences from such equal division, (if any), was the result of error, or were wrongful and without right.

FIFTEENTH.

That in 1893 the South Jordan Milling Company erected a mill upon the Beckstead Irrigation Company's Canal, mentioned in Finding 4, and enlarged said canal, and have from said time to the preset, operated said mill continuously with water appropriated from the Jordan river, and conveyed thru the said Beckstead Canal, using for that purpose, 23 cu. ft. of water per sec.

That/for more than 20 years prior to said appropriation, said amount of water had during all seasons continuously, ran down the main channel of said river, to the mill owners to the north and below where said water is used.

The water thus used is returned to the river at a point above the place of division of the water by the Gardiner mill race, the Cooper mill race and the Bennion and Bennion mill race.

There is no water taken from the river for any purpose, between the head of the Beckstead Canal and the point where said water is returned to the river, and the distance from the head of the Canal to the point where the water is returned to the river, is 2 miles less by way of the Canal than by way of the channel of the river, and the water used in the operation of such mill can be conveyed thru said canal, and after being used, returned to the river undiminished in quantity and unimpaired in quality, without in any manner interfering with any rights of prior claimants.

SIXTEENTH.

The court finds that in the months of April and May, 1897, one C.M. Bull, acting for and in behalf of Allen G. Lemmon, the grantor and predecessor in interest of the Salt Lake City Water & Electrical Power Company, posted, filed and recorded a notice that he had appropriated the entire flow of the Jordan river, (except the waters theretofore appropriated by the East Jordan Irrigation Company and the Utah & Salt Lake Canal Company), at a point immediately south of the old dam so called, in Sec. 22, T. 4 South of Range 1 East, for the purpose of operating a power plant for the generation of electrical power, the waters so sought to be appropriated to be returned after having been used for power purposes at such plant undiminished in quantity and unimpaired in quality to said river, and such appropriation was declared in said notice to be subject and secondary to all vested rights of prior appropriators; and in the month of June of the same year, one, C. [illegible] L. Stephens, acting for and on behalf of Allen G. Lemmon, the grantor and predeccor in interest of the said Power Company, posted, filed, and recorded a similar notice, which notice was an exact duplicate of the Bull notice, but which said notice was not verified by the affidavit of said Stephens or by anyone on his behalf.

And in December of the same year, the said Allen G. Lemmon, posted, filed and recorded a notice that he had appropriated one-sixth of the entire natural and unimpeded flow of the Jordan river at a point in Sec. 25, T. 4 South of Range 1 West, of the Salt Lake Meridian, to be by him diverted and conveyed thru the canal of the Utah & Salt Lake Canal Company to a point in Sec. 15, T. 4 South of Range 1 West; so much of said water as might be necessary to be used at that point to furnish power for an electrical power generating plant, and the residue thereof for the purpose, as stated by him in said notice, for the irrigation of about 20,000 acres of land, but the court finds that before that time all of the water of said river had been appropriated by others for beneficial uses, and the said notice and claim of appropriation by said Lamson was not effectual to appropriate any other waters of said river, and therefore no right was acquired thereunder.

That in October, 1899, the said defendant Power Company posted, filed and recorded a notice that it had appropriated the waters of Jordan River theretofore appropriated by Salt Lake City, and which said city was entitled to flow thru its canal, such water to be conveyed thru the Utah & Salt Lake Canal Company to said power plant, and after passing thru the wheels of said plant, to be returned to the city's canal and at a point opposite the power plant, undiminished in quantity and unimpaired in quality.

And in November of the same year, a similar notice was posted, filed and recorded by the said Salt Lake City Water & Electrical Power Company, giving notice of the appropriation by it of the waters of the South Jordan Canal Company, to be used in the same way for the same purpose, and returned to the South Jordan Canal in a similar manner.

In January, 1900, the Salt Lake City Water & Electrical Power Company filed and caused to be recorded in the office of the County Recorder of Salt Lake County, a notice of consolidation of its several water rights, by virtue of the various notices of appropriation, and of its change of the place of use of the same from Sec. 22, T. 4 South of Range 1 West, xxxx to Sec. 15, same Township and Range.

In June, 1899, the said Power Company procured from the South Jordan Canal Company a license, (revocable at the pleasure of said Canal Company) to use the water to which said Canal Company was entitled, and after passing the same thru its water wheels, to return it to the South Jordan Canal Company at a point opposite the power plant, which license is still in force.

The power plant is operated by turbine wheels, which at their full capacity require 700 cu. ft. of water per sec. This plant has been in operation continuously since it started in 1899, except from Dec. 15, 1900, to Jan. 12, 1901.

When the water belonging to the city canal and South Jordan Canal was used by the Power Company, it was returned to said canals at points above where water was used for any purpose from either of said canals.

The Court further finds from the evidence that it is practicable for said defendant Power Company to use the waters of said river, the right of use of which is also in said South Jordan Canal Company and said Salt Lake City, thru the wheels and machinery to said power house of said power company, and to discharge the same undiminished in quantity and unimpaired in quality into the said canal of said South Jordan Canal Company, and that of Salt Lake City, opposite the said power house, by means of proper machinery and appliances therefor at said power plant.

That the appropriation of the use of such water for and on behalf of the Power Company in order to be completed requires the use of the City's canal by said Power Company for the purpose of discharging water after being used by the Power Co. thru a flume across the Jordan river and into the City Canal at a point about 1½ miles below the head thereof, and that without such use by the Power Co. of the City's Canal, the appropriation of the use of such water by the Power Co. cannot be made effective.

That the said Salt Lake City Water & Electrical Power Co. has commenced an action in the court to condemn the right to use the canal of Salt Lake City in the manner aforesaid, and to make effective its appropriation of the use of the city's water.

That the Salt Lake City Water & Electrical Power Co. is the owner in fee simple of the land on which the said power house and plant and its appurtenances stand, being about 20 acres of land situated on the banks of said Jordan River to the thread of the stream.

SEVENTEENTH.

That the irrigation season in ordinary years, extends from the 1st day of April to the 30th day of September.

EIGHTEENTH.

That the plaintiff, Salt Lake City, is and was at all the times mentioned in plaintiff's complaint, a Municipal Corporation in the County of Salt Lake and State of Utah.

That the plaintiff, Utah & Salt Lake Canal Company, and the defendants, East Jordan Irrigation Company, South Jordan Canal Company, North Jordan Irrigation Company, West Jordan Milling & Mercantile Company, Utah Mattress & Manufacturing Company, United States Mining Company, Beckstead Irrigation Company, South Jordan Milling Company, and Salt Lake City Water & Electrical Power Company, are and at all times mentioned in the plaintiff's complaint, and in the said defendant's answers and cross-complaints, were corporations organized and existing under the laws of Utah.

That the defendants, Hyrum Bennion and Saml. R. Bennion, are and at the times mentioned in their pleadings were, co-partners under the firm name of Bennion and Bennions.

NINETEENTH.

That Jos. Geoghegan, as Receiver of the Salt Lake City Water & Electrical Power Co., the plaintiff in suits Nos. 3449 and 3459, has not, nor has the said power co. nor its predecessors in interest, ever diverted or used the waters of the Jordan River, except as in these Findings expressly stated.

TWENTIETH.

That the waters of Utah Lake have not for fifty years past, during the fall season of each and every, or any year, been permitted to flow unobstructed from said lake into the Jordan river and past the power plant of said Salt Lake City Water & Electricla Power Co. and into the Great Salt Lake, except as in these Findings expressely stated.

TWENTY - FIRST.

That at the time of and prior to the commencement of suits Nos. 3449 and 3459, consolidated herein, owing to the diminished precipitation during the preceding year, the waters of Utah Lake had dried up and receded until they had almost reached low water mark, being a point on a level with the bed of the Jordan river, where it received the waters from said lake, and that in consequence thereof, in order to provide for supplying the demands and meeting the necessities of the defendants, Salt Lake City and the several canal and irrigation companies, during the following spring and summer seasons, it became and was necessary to place planks and obstructions in the impounding dam across the Jordan river on or about the 25th day of Oct. 1900, for the purpose of storing the waters of said Utah Lake for the purposes aforesaid.

THIRTY - SECOND.

That the Salt Lake City Water & Electrical Power Company, at the time when it made and filed its notices of appropriation, of the waters of the Jordan River, and located and constructed its power plant upon said river, had full knowledge and notice of the several rights of said Salt Lake City and the several canal and irrigation companies aforesaid, and of their sevefal appropriations and right of storage, as aforesaid, and of the exercise of said right to store water in Utah Lake for many years prior thereto.

THIRTY - THIRD.

That on or about the 18th day of April, 1900, the said Salt Lake City Water & Electtrical Power Co., by its agents, servants, and employees, entered upon the impounding dam hereinbefore mentioned in these Findings, and removed the planks therefrom and permitted the waters of Utah Lake, heretofore and then being stored and restrained, from flowing down the Jorden River, for the purposes of use by the defendants, Salt Lake City and the canal and irrigation companies, during the coming irrigating season, whereby said waters were lost for the purposes aforesaid, and thereupon the said power company commenced an action in the Fourth Judicial District Court of the State of Utah in and for the County of Utah, against the said city and canal and irrigation companies, and upon its verified complaint therein, procured to be issued out of and by said court, a restraining order probhibiting the said city and canal and irrigation companies from putting said planks back into said dam, and from attempting to store or impound one-sixth of the natural flow of the said river, and from in any way interfering with the use thereof by the said power company and requiring them to turn over said impounding dam, one-sixth of the natural flow, as aforesaid; and thereafter, on or about the 8th day of Aug. 1900, upon the said cause coming on for trial before said court, the said plaintiff, Salt Lake City Water & Electrical Power Co., dismissed said suit finally out of said court, thereby vacating the said restraining order; that thereafter, during the latter part of Oct. 1900, the receiver, Jos. Geoghegan, plaintiff in suits Nos. 3443 and 3439, commenced suits against said city and canal and irrigation companies, severally, in this court, and thereupon procured to be issued out of and by said court, temporary restraining orders and orders to show cause, which said restraining orders restrained and enjoined the said city and canal and irrigation companies, from preventing four-sixths of the waters of the Jordan River from flowing continuously and uninterruptedly down said river, and thereafter, on or about the 17th day of November 1900, the said receiver, by his attorneys, without the consent or knowledge of said city and canal and irrigation companies, or their attorneys, upon motion, procured said restraining orders to be vacated and set aside, which was done by the court.

AS CONCLUSIONS OF LAW.

From the foregoing facts, the Court finds:

FIRST.

That the intervenors mentioned in the first Finding of Facts, are entitled to a decree awarding them the use during the irrigation season in each year for the purpose of irrigating their lands, amounting to 250 acres, of 5 cu. ft. of water per sec. of time, and quieting their title thereto, such water to be taken thru the Bennion and Bennion mill race, and to be measured at the point of diversion from said race; and that Hyrum Bennion, and Samuel R. Bennion, partners as Bennion and Bennion, are entitled to a decree awarding to them the use of 40 cu. ft. of water per sec. for the operation of their mill race, and quieting their title thereto, such water to be measured at the entrance to the pen stock of said mill.

SECOND.

That the defendant, the West Jordan Milling & Manufacturing Co., its successors and assigns, is entitled to, and is the owner of the right to use 30 cu. ft. of water per sec. of time, by virtue of its appropriation as set forth in the findings of fact herein, subject only to the limitations prescribed by law, and hereinbefore set forth, the said water to be measured at the entrance to its pen stock.

That the defendant, Utah Mattress & Manufacturing Co. and its successors and assigns, is entitled to, and is the owner of the right to use 11 cu. ft. of water per sec. of time, by virtue of its appropriation, as set forth in findings of fact herein, subject only to the limitations prescribed by law, and herein set forth, the said water to be measured at the entrance to its pen stock.

That John A. Egbert, Albine Beckstead, Hyrum Beckstead, John H. Bailey, Henry Dinwoodey, A.L. Egbert, D.A. Egbert, Solon Richardson, Ludwig Christenson, and James Peterson, are entitled to a decree awarding to them the use during the irrigation season of each year for the purposeof irrigating their lands, amounting to 293.25 acres, of 5.3 cu. ft. of water per sec. of time, such water to be taken thru the Cardiner mill race, and measured at the point of diversion from said race.

THIRD.

That Absolem H. Smith, W.R. Wellington, A.C. Lunnen, A.D. Lunnen, James Blake, and Chas. Blake, are entitled to a decree awarding to them, collectively, the use during the irrigation season of each year, for the purpose of irrigating their lands, of 2.825 cu. ft. of water per sec. of time, such water to be taken thru the Galena Canal, and to be measured at the point of diversion from said canal.

That Sarah E. Stewart is entitled to a decree awarding to her the use during the irrigation season of each year for the purpose of irrigating her land, of 1.4 cu. ft. of water per sec. of time, such water to be taken thru the Galena Canal, and to be measured at the point of diversion from said canal.

That Henry Osborne is entitled to a decree awarding to him a right to use during the irrigation season of each year, for the purpose of irrigating his land, .54 cu. ft. of water per sec. of time, such water to be taken thru the Galena Canal, and measured at the point of diversion from said canal.

That John T. Wilson is entitled to a decree awarding to him the use, during the irrigation season of each year for the purposes of irrigating his land, of .30 cu. ft. of water per sec. of time, such water to be taken thru the Galena Canal, and to be measured at the point of diversion from said canal.

That the defendant, the United States Mining Company, its successors and assigns, is entitled to, and is the owner of the right to use 17 cu. ft. of water per sec. of time, by virtue of its appropriation, as set forth in the findings of fact herein, subject only to the limitations prescribed by law, and herein set forth, the said water to be measured at the entrance to its pen stock.

FOURTH

That the Beckstead Irrigating Company is entitled to a decree awarding to it the use during the irrigation season of each year for the purpose of irrigating the lands owned by the stockholders, amounting to 530 acres, of 12 cu. ft. of water per sec. of time, such water to be taken thru the Beckstead ditch, and to be measured in the weirs in the lower part of said canal for water used above the South Jordan Milling Company's mill, and in said canal at a point opposite said mill for water used below said mill, and further, to the right to use during the winter or non-irrigation season, of 4 cu. ft. of water per sec, for domestic and culinary uses by the stockholders of said company, such water to be measured at the intake of said canal.

FIFTH.

That Louis Mousley, Else L. Madsen, Johannah [illegible]. Matt, Caroline Jensen, James Madsen, and Margret Madsen, are entitled to a decree awarding to them the use during the irrigation season of each year, for the purpose of irrigating their land, amounting to 87.5 acres, of 2 cu. ft. of water per sec. of time, such water to be taken thru the Mousley ditch, and to be measured at the intake of said ditch.

SIXTH.

That the defendant, Wm. Cooper, Jr., his heirs and assigns, is entitled to, and is the owner of the right to use 23 cu. ft. of water per sec. of time, by viture of his appropriation, as set forth in the findings of fact herein, subject only to the limitations prescribed by law, and herein set forth, the said water to be measured at the entrance to its pen stock.

That John Neff is entitled to a decree awarding to him the use during the irrigation season of each year, for the purpose of irrigating his land, of 1.4 cu. ft. of water per sec. of time, such water to be taken thru the Cooper mill race, and to be measured at the point of diversion from said mill race.

That Anna [illegible]. Neff is entitled to a decree awarding to her the use during the irrigation season of each year for the purpose of irrigating her land, of 1.2 cu. ft. of water per sec. of time, such water to be taken thru the Cooper mill race, and to be measured at the point of diversion from said race.

That John [illegible]. Wilson is entitled to a decree awarding to him the use during the irrigation season of each year, for the purpose of irrigating his land, of .3 cu. ft. of water per sec. of time, such water to be taken thru the Cooper mill race, and to be measured at the point of diversion from said race.

SEVENTH.

That Salt Lake City, the Utah and Salt Lake Canal Company, the East Jordan Irrigation Company, the South Jordan Canal Company, and the North Jordan Irrigation Company, are entitled to a decree awarding to them, subject to the limitations hereinafter set forth, the right to the use of all the balance of the waters of the Jordan River, for municipal, irrigation, culinary, and domestic purposes, to the extent of the capacity of their several canals, and the right to impound and store all the waters of said river in Utah Lake, and to have their title thereto quieted.

The said city and canal and irrigation companies shall at all times allow to flow unimpeded down thru the channel of the river, a sufficient quantity of water, which, when added to the accretions to the river from seepage and other sources, will furnish at the various points of diversion and measurement, the several quantities of water herein awarded to the West Jordan Milling and Mercantile Co., the Utah Mattress and Manf. Co., the United States Mining Co., Wm. Cooper, Jr., and Bennion and Bennion, for the operation of their several mills and factories; and during the irrigation season of each year, shall allow to flow unimpeded thru the channel of the river, such additional quantity of water as will, when added to the accretions from seepage and other sources, supply at the various points of diversion and measurement, the quantity of water herein awarded to the several farmers and land owners taking water for irrigation purposes thru the Gardiner mill race, the Galena Canal, the Beckstead Irrigation Company's canal, the Mousley ditch, the Bennion and Bennion mill race, and the Cooper mill race, as hereinbefore set forth; and during the winter or non-irrigation season, 4 cu. ft. of water for the use of the stockholders of the Beckstead Irrigating Co., for domestic and culinary purposes; Provided, that in all cases where the waters of the river are diverted and used for beneficial uses and after such use are delivered to the uses of any of the parties hereto, the quantity so delivered for such subsequent uses shall be, to the extent thereof so delivered, the quantity awarded by the decree to such subsequent users.

Subject to these limitations and conditions contained in the agreement of compromise entered into in 1885, between Joseph R. Cooladge and others and said city and canal and irrigation companies, the said city and canal and irrigation companies, shall have the right at all times to shut off, impound, and store the entire flow of the Jordan River, and hold and save the same for further use to the extent which, in their judgment, their interests may require; and as between themselves, the said city, the Utah and Salt Lake Canal Company, the East Jordan Irrigation Company, the South Jordan Canal Company, and the North Jordan Irrigation Company, shall have an equal right to the use of all such waters, to the extent of the capacity of their several canals, and while there is sufficient water for that purpose, may each take the full quantity of water their respective canals will carry, and when the water is insufficient to fill all the canals to their maximum capacity, then the city and canal and irrigation companies shall be entitled to an equal division thereof; provided, that if by such division one-fifth of the water should exceed the capacity of any of the canals, such excess may be used by such remaining canals as have the capacity to take the same, in equal proportions; and during the winter, or non-irrigation season, each of said canal companies shall have the right to the use of 10 cu. ft. per sec. of water in their several canals, for the use of their stockholders for culinary and domestic purposes.

EIGHTH.

That the South Jordan Milling Co. is entitled to a decree awarding to it the right to use 20 cu. ft. of water per sec. of time, of the water required as herein set forth, to flow thru the channel of the river, for the use of the claimants diverting water below the location of such mill, such water to be taken thru the Beckstead canal and measured at the pen stock of said mill, and to be returned to the river at a point opposite the location of said mill.

NINTH.

That the Salt Lake City Water & Electrical Power Co. is entitled to a decree awarding to it the right to convey to its power plant and use for the purpose of operating the same, all the waters of the river required as hereinbefore set forth, to flow thru the channel of the river for the use of claimants diverting water from the river below said power plant, such water to be returned to the river undiminished in quantity and unimpaired in quality, at a point opposite the place of use by said power company; also the right to convey to its power plant and use for the purpose of operating the same, the waters which the South Jordan Canal Company is entitled to take into its canal, such waters to be delivered after such use, into the South Jordan Canal, according to the terms of the license heretofore mentioned, so long as the same remains unrevoked; also the right to convey to its power plant and use for the purpose of operating the same, the waters which the city of Salt Lake is entitled to take into its canal so long as said city shall continue to divert its water at its present point of diversion, and use the same at its present place of use, but the right of the said Salt Lake City Water & Electrical Power Company to use the city's said water will be effective only after said power company has established, by judgment of the court in an action at law, its right to make connections with its flume and the city's canal, and shall have paid to said city any sum which may be awarded to said city by such judgment by way of damages therefor, and in the event that the license hereinbefore referred to as having been granted by the said South Jordan Canal Company to the said power company, should at any time be revoked, then the right of said power company to use the waters of said South Jordan Canal Company shall only be effective when said power company shall have obtained a judgment in an action at law condemning and giving it the right to connect its flume with the canal of the said South Jordan Canal Company, and shall have paid to said South Jordan Canal Company any sum which may be awarded to it by said judgment.

In the use by the power company of the waters herein awarded to it, it will be required to deliver, after having used the same, the proper proportions thereof, into the river, the city canal, and the South Jordan Canal, as the same shall be reported to said company by the persons authorized to determine the quantities belonging to each respectively; and in delivering such water the power company will be required to mainain such uniformity of flow as will occasion no greater fluctuations than would occur if the water was taken into the said canals direct from the river.

Subject to the limitations aforesaid, the said power company is entitled to a decree of this court quieting its title and right to the use of all the waters flowing in said Jordan River, except that part of such waters, the right of use of which is in the East Jordan Canal Company and the Utah and Salt Lake Canal Company.

TENTH.

That all persons and corporations, parties to this suit, shall construct, or cause to be constructed, at their own cost, under the direction and supervision of a competent engineer, proper appliances for the accurate measurement of the waters awarded to them, respectively, and thereafter shall maintain and keep in place, all dams, headgates, flumes, canals, pen stocks, and other means by which the water is diverted, conveyed or used, in a good state of repair, together with the appliances for the measurement of the water, so that no unnecessary loss from seepage or leakage shall occur, and that the water shall be economically applied.

ELEVENTH.

That for the purpose of carrying into effect the decree herein, according to its true intent, the court will appoint a suitable and competent person, to be agreed upon, if possible, by the parties, otherwise to be elected by the court, at a compensation to be fixed and apportioned among the parties, to superintend and direct the measurement and division of the water, and to direct, supervise and inspect all means and appliances for the diversion, conveyance, and use of the same, and to report from time to time to the court, any violation of the provisions of the decree.

TWELFTH.

That the court will retain original jurisdiction of this cause and the subject matter hereof, for the purpose of making all necessary orders and supplementary decrees to render effectual the rights awarded and preserved by this decree; and also in the case of necessity in seasons of extreme drouth, to preserve the lives of live-stock, orchards, and permanent improvements, for the further purpose of making a temporary re-distribution of the waters.

That the costs incurred by each party in the main suit herein, No. 2361, shall be paid by such party.

That in the injunction suits herein, Nos. 2449 and 2459, the plaintiff shall pay the costs of said suits.

THIRTEENTH.

That the injunctions prayed for in the cases of Jos. Geoghegan, Receiver, vs. Salt Lake City, and Jos. Geoghegan, Receiver, vs. Utah and Salt Lake Canal Company, South Jordan Canal Company, North Jordan Irrigation Company, and East Jordan Irrigation Company, be denied, and judgment therein be entered for the defendants, respectively, with costs.

FOURTEENTH.

That the parties to this action are entitled to a decree, perpetually enjoining the said parties, their successors and assigns, and each of their agents, servants and employees, and all persons acting for them, or in their interests, from in any manner, or at all, interfering one with another, in the full, free, and unrestricted use of the quantity of the waters of said river herein awarded to them, and from in any manner, or at all, interfering with each other's canals, dams, or head-gates, and from in any manner, or at all interfering with the distribution of the said waters by the commissioner [illegible] provided for.

DECREE

The court having made and entered the foregoing Findings of Fact and Conclusions of Law in the above entitled action, and being fully advised in the premises:

IT IS ORDERED, ADJUDGED AND DECREED.

I.

That the intervenors, Hyrum Bennion, W. H. Bennion, Wilford Bennion, Arthur Bennion, Emma Lindsay, R. A. Sharp, Emma J. Bennion, Samuel A. Bennion, Parley Bennion, Mary Bennion, Roland Bennion, Orson Bennion, Vincent Bennion, Mary Ann Bennion, Jennie Bennion, Minnie Bennion, Effa Bennion, Adam Bennion, Henry Harker, Susan Harker, Job Harker, William Harker, Harriet Harker, Mabel Harker, Edna Harker, Benjamin E. Harker, Ephraim Harker, Heber Harker, Levi Harker, James Marsden, Maria B. Cannon, Angeline R. Spencer, Mary B. Calder, Ira Bennion, Samuel R. Bennion, Rachel Spencer, George [illegible]. Spencer, Heber Bennion, and a co-partnership composed of Samuel R. Bennion and Hyrum Bennion, are the owners of the right to the use of five (5) cubic feet of water per second of time, during the irrigation season of each year, for the irrigation of their lands, amounting to two hundred and fifty (250) acres, such water to be taken through the Bennion and Bennion mill race, and to be measured at the point of diversion from said race. And that Hyrum Bennion and Samuel R. Bennion, partners as Bennion and Bennion, are the owners of the right to the use of forty (40) cubic feet of water per second of time, for the operation of their mill upon said mill race, during the times when their said mill is in operation, to be measured at the entrance to the penstock of said mill.

II.,

That the defendant, ~~West Jordan Milling and Mercantile Company~~ Kennecott Copper Corp., a corporation, is the owner of the right to the use of thirty (30) cubic feet of water per second of time, for the operation of its mill, to be taken through the Gardner mill race and measured at the entrance to the penstock of said mill.

That the defendants, John A. Egbert, Albine Beckstead, John H. Bailey, Henry Dinwoodey, [illegible]. L. Egbert, D. A. Egbert, Solon Richardson, Ludwig Christensen and James Peterson, are the owners of the right to the use of five and three-tenths (5.3) cubic feet of water per second of time, during the irrigation season of each year, for the purpose of irrigating their lands, amounting to two hundred and ninety-three and 25-100 (293.25) acres, such water to be taken through the Gardner mill race and measured at the point of diversion from said race.

That the defendant, Utah Mattress and Manufacturing Company, a corporation is the owner of the right to the use of eleven (11) cubic feet of water per second of time, for the operation of its factory, such water to be taken through the Gardner mill race and measured at the entrance to the penstock of said factory.

III.

That the defendants, Absolam [illegible]. Smith, W. R. Wellington, A. C. Lunnen, A. D. Lunnen, James Blake and Charles Blake, are the owners of the right to the use, collectively, of two and 825-1000 (2.825) cubic feet of water per second of time, during the irrigation season of each year, for the purpose of irrigating their lands, such water to be taken through the Galena canal and measured at the point of diversion from said canal..

That the defendant, Sarah E. Stewart is the owner of the right to the use of one and four tenths (1.4) cubic feet of water per second of time, during the irrigation season of each year, for the purpose of irrigating her land, such water to be taken through the Galena canal and measured at the point of diversion from said canal.

That the defendant, Henry Osborne, is the owner of the right to the use of 54-100 (.54) of a cubic foot of water per second of time, during the irrigation season of each year, for the purpose of irrigating his land, such water to be taken through the Galena canal and measured at the point of diversion from said canal.

That the defendant, John T. Wilson, is the owner of the right to the use of three-tenths (.3) of a cubic foot of water per second of time, during the irrigation season of each year, for the purpose of irrigating his land, such water to be taken through the Galena canal and measured at the point of diversion from said canal.

57-7625
B, 57-7626 That the defendant, United Sharon States ~~Mining~~ Smelting Company, a corporation, is the owner of the right to the use of seventeen (17) cubic feet of water per second of time, for the operation of its mill, such water to be taken through the Galena canal and measured at the entrance of the penstock of said mill.

IV.

That the defendant, the Beckstead Irrigation Company, a corporation, is the owner of the right to the use of twelve (12) cubic feet of water per second of time, during the irrigation season of each year, for the purpose of irrigating the lands owned by its stockholders, amounting to five hundred and thirty (530) acres, such water to be taken through the Beckstead ditch, and measured as follows:

The water taken from said ditch, above the South Jordan Milling Company's mill, shall be measured in the weirs in the lower bank of said ditch, and the water used below said mill, shall be measured at a point in said ditch, opposite said mill, and said defendant is also the owner of the right to use during the winter or non-irrigation season of each year, four (4) cubic feet of water per second for domestic and culinary purposes by the stockholders of said company, such waters to be measured at the intake of said ditch.

V.

That the defendants, Louis H. Mousley, Rise C. Madsen, Johanna S. Hatt, Caroline Jensen, James Madsen and Margaret C. Madsen, are the owners of the right to the use of two (2) cubic feet of water per second of time, during the irrigation season of each year, for the purpose of irrigating their lands amounting to eighty-seven and 5-10 (87.5) acres, such water to be taken through the Mousley ditch, and measured at the intake of said ditch.

VI.

That the defendant, J. W. W. Fitzgerald ~~William Cooper, Jr.~~, is the owner of the right to the use of twenty-three (23) cubic feet of water per second of time, for the operation of his mill upon the Cooper mill race, such water to be taken through said race and measured at the entrance to the pehstock of said mill.

That the defendant, John Neff, is the owner of the right to the use of one and four-tenths (1.4) cubic feet of water per second of time, during the irrigation season of each year, for the purpose of irrigating his land, such water to be taken through the Cooper mill race and measured at the point of diversion from said race.

That the defendant, Anna E. Neff is the owner of the right to the use of one and two-tenths (1.2) cubic feet of water per second of time, during the irrigation season of each year, for the purpose of irrigating her land, such water to be taken through the Cooper mill race and measured at the point of diversion from said race.

That the defendant, John T. Wilson, is the owner of the right to the use of three-tenths (.3) of a cubic foot of water per second of time, during the irrigating season of each year, for the purpose of irrigating his land, such water to be taken through the Cooper mill race and measured at the point of diversion from said race.

VII.

[illegible]

That the plaintiffs, Salt Lake City, a municipal corporation, and the Utah and Salt Lake Canal Company, a corporation, and the defendants, East Jordan Irrigation Company, South Jordan Canal
59-3496 Company and the ~~North Jordan Irrigation Company~~, corporations, are the owners of the right to the use of all of the balance of the waters of the Jordan River, for municipal, irrigation,

and domestic purposes, to the extent of the capacity of their several canals, and of the right to impound and store all of the waters of said river in Utah Lake, subject to the limitations hereinafter set forth.

That the said city and canal and irrigation companies shall, at all times, allow to flow unimpeded down through the channel of said river, a sufficient quantity of water, which, when added to the accretions to the river from seepage and other sources, will furnish at the various points of diversion and measurement, the several quantities of water herein awarded to the West Jordan Milling and Mercantile Company, the Utah Mattress and Manufacturing Company, the United States Mining Company, William Cooper, Jr., and Bennion and Bennion, for the operation of their several mills and factories; and, during the irrigation season of each year, shall allow to flow unimpeded through the channel of the river such additional quantity of water as will, when added to the accretions from seepage and other sources, supply, at the various points of diversion and measurement, the quantity of water herein awarded to the several farmers and land owners taking water for irrigation purposes through the Gardner mill race, the Galena canal, the Beckstead Irrigation Company's canal, the Mousley ditch, Bennion and Bennion mill race and the Cooper mill race, as hereinbefore set forth; and during the winter or non-irrigation season, four (4) cubic feet of water, for the use of the stockholders of the Beckstead Irrigating Company, for domestic and culinary purposes; Provided, however, that in all cases where the waters of the river are diverted and used for beneficial uses, and after such uses are delivered to the uses of any of the parties hereto, the quantity so delivered for subsequent uses, shall be to the extent thereof so delivered, the quantity awarded by this decree to such subsequent uses.

That subject to these limitations and to the limitations and conditions contained in the agreement of compromise entered into in 1885, between Joseph H. Colladge and others and said city and canal and irrigation companies, the said city and canal and irrigation companies have the right, at all times, to shut off, impound and store the entire flow of the Jordan River, and hold and save the same for future use, to the extent which, in their judgment their interest may require, and, as between themselves, the said city, the Utah and Salt Lake Canal Company, the East Jordan Irrigation Company, the South Jordan Canal Company, and the North Jordan Irrigation Company, shall have an equal right to the use of all such waters, to the extent of the capacity of their several canals, and, while there is sufficient water for that purpose, may each take the full quantity of water their respective canals will carry, and, when, the water is insufficient to fill all the canals to their maximum capacity, then the city and canal and irrigation companies shall be entitled to an equal division thereof; Provided, that if by such division one-fifth of the water should exceed the capacity of any of the canals. such excess may be used by such remaining canals as have the capacity to take the same in equal proportions; and during the winter or non-irrigation season, each of said canal companies shall have the right to the use of ten cubic feet of water per second of time in their several canals, for the use of their stockholders for culinary and domestic purposes.

VIII.

That the defendant, the South Jordan Milling Company, a corporation, is the owner of the right, for the operation of its mill, to the use of twenty-three (23) cubic feet per second of the water required, as hereinbefore set forth, to flow through the channel of the river for the use of the claimants' diverting water below the location of such mill, such water to be taken through the Beckstead canal and measured at the penstock of said mill and to be returned to the river at a point opposite the location of said mill.

IX.

That the Salt Lake City Water and Electrical Power Company is the owner of and entitled to the right to use all the waters of the Jordan River flowing in and through the channel thereof, at and above a point on said river where the power plant of said company is situated, to the use of which the several persons and claimants diverting the waters of the river north and below the said power plant are entitled, as appropriators, with fixed and primary rights, as awarded by this decree, and to convey such water to its power plant for use in the operation of the same, and to deliver the same, after such use back into the river, undiminished in quantity and uninparied in quality, at a point opposite the place of use by the said company. Also in the same manner the right to convey to its said power plant, and use for the purpose of operating the same, all the waters of the river to which the South Jordan Canal Company is entitled by this decree and to take into its canal and to deliver back into the canal of the said South Jordan Canal Company, after such use, all of said water, undiminished in quantity and unimpaired in quality, in accordance with the terms of the license granted by said South Jordan Canal Company to the said Power Company, so long as the same shall remain unrevoked. Also in the same manner, the right to convey to its said power plant, and use for the purpose of operating the same, all the waters of the river to which Salt Lake City is entitled by this decree, and to take into its canal, and to deliver back into the canal of the said Salt Lake City, after such use, all of said water, undiminished in quantity and unimpaired in quality, so long as said Salt Lake City shall continue to divert its water at its present point of diversion, and to use the same at its present place of use, provided however, that the right of the said Salt Lake City Water and Electrical Power Company to so take and use the City's said water, shall be effective only after said Power Company established by judgment of the court in an action at law, its right to make connections with its flume and the said city's canal, and shall have paid to said city any sum which may be awarded to said city by such judgment, by way of damages therefor, and provided further that in the event, the license hereinbefore referred to as having been granted by the said South Jordan Canal Company to the said Power Company to take and use the waters of said South Jordan Canal Company, shall only be effective when said Power Company shall have obtained a judgment in an action at law condemning and giving it the right to connect its flume with the canal of said South Jordan Canal Company, and shall have paid to said South Jordan Canal Company any sum which may be awarded to it by said judgment.

X.

That the Salt Lake City Water and Electrical Power Company shall, at all times, deliver into the Jordan River and into the South Jordan Canal, so long as the license to use waters of the South Jordan Canal Company shall remain unrevoked, and into the Salt Lake City's canal after it shall have established its right to connect its flume with said City's canal, all the waters, the use of which is awarded to it by this decree, in proper proportions thereof, respectively, as the same shall be determined and reported by the persons authorized to determine the quantities to go into the river and into the said canals, respectively, and in delivering such water, the said Salt Lake City Water and Electrical Power Company shall maintain such uniformity of flow as will occasion no greater fluctuations thereof than would occur if the water was taken direct from the river by the said South Jordan Canal Company and Salt Lake City, into their own canals, or suffered to flow directly down the channel thereof from the dam to the claimants and appropriators below.

XI.

That all persons and corporations, parties to this suit, shall, respectively, construct, or cause to be constructed, at their own cost and under the direction or supervision of the commissioner appointed by the court, proper appliances for the accurate measurement of the waters awarded to them, respectively, and thereafter shall maintain and keep in place, all dams, headgates, flumes, canals, penstocks and other means by which said water is diverted, conveyed or used, in a good state of repair, together with appliances for the measurement of such water, to the end that no unnecessary loss from seepage or leakage shall occur, and that the water shall be economically applied to the uses for which it is awarded.

XII.

That all the rights, declared and decreed herein, are founded upon appropriation of water, necessary for beneficial uses, and that all such rights hereby decreed and provided for in this decree, are subject in the exercise of such [illegible] to the conditions that they are required and necessary for some beneficial use, and that all such rights are expressly subject to the limitations and conditions; that such waters are used for some beneficial use, and are used economically, without waste, and with due care, and are reasonably and fairly necessary for such use.

And each of the parties to this action, and their successors and assigns, and they, and each of their agents, servants and employees, and all persons acting for them, or in are hereby forever enjoined and restrained from at all, interfering one with the other, in the unrestricted use of the quantity of the waters o herein awarded to them, and from in any manner, or at a terfering with each other's canals, dams or headgates, and in any manner, or at all, interfering with the distribution the said waters by the commissioner herein appointed.

XIII.

That for the purpose of carrying into effect this decree, according to its true intent and purpose, J. Fewson Smith, Jr., is hereby appointed as a Commissioner, at a monthly compensation of $100.00 to superintend and direct the measurement and division of all the water, distributed by this decree in accordance therewith; to direct, supervise and inspect all means and appliances for the diversion, conveyance and use of the same, and to report from time to time to the court, any violation of the provisions of this decree.

That the said monthly compensation of said Commissi any other necessary expenses or costs incurred by h charge of his duties, as hereby directed by the following parties and in the pro wit: One-sixth each by the City of Salt L Canal Co., the South Jordan Canal Co., the East Jordan Co., the North Jordan Irrigation Co., and the Sal ater & Electrical Power Co.

XIV.

And it is further ordered, adjudged and decreed, that original jurisdiction of this cause and the subject matter thereof and of the parties thereto, is hereby retained, for the purpose of all necessary supplementary orders and decrees which may be required to make effectual the rights awarded and preserved by this decree:

And in case of urgent necessity in seasons of extreme drouth, or otherwise, to make all proper and necessary orders and decrees required to preserve the lives of livestock, orchards and other permanent improvements of like character, and for the purpose of providing, temporarily, water for household and domestic purposes.

XV.

And it is further ordered, adjudged and decreed, that in the case of Joseph Geoghegan, Receiver, etc., vs Salt Lake City, No. 3449, the plaintiff take nothing by his said suit, and that the complaint be and the same is hereby finally dismissed, with costs taxed at $____________, in favor of the defendant.

That in the case of Joseph Geoghegan, Receiver, etc., vs. Utah and Salt Lake Canal Company, South Jordan Canal Company, North Jordan Irrigation Company and East Jordan Irrigation Company, No. 3459, the plaintiff take nothing by his said suit, and that his complaint be finally dismissed, with costs taxed at $____________, in favor of the defendants.

Dated this 1[illegible]th day of July, 1901.

C. . MORSE,

Judge.

346-366

#53-Morse Orders and Decrees.
(Title of Court and Cause).

SUPPLEMENTAL DECREE.

This matter coming on regularly to be heard this 10th day of Aug. 1901, upon the motion of Wilson & Smith, attorneys for defendant, John Neff, moving the court to amend and modify the findings of fact, conclusions of law, and the decree heretofore entered and filed herein, due notice of which motion was given to the attorneys for all the parties hereto, and no objection being made thereto, and it appearing to the court from the files and records herein, and from the evidence adduced at the trail of said cause; that the said defendant, John Neff, is entitled to the relief demanded in said motion; and it further appearing that the matters proposed by said amendments were omitted from said findings of fact, conclusions of law, and decree by an inadvertence.

It is ordered, adjudged, and decreed that the said findings of facts, the conclusions of law and decree be, and the same are hereby modified and amended as follows:

That at the end of line 17, paragraph 6 of the 9th finding of facts, the following words shall be and they are hereby inserted, "John Neff, 15 acres." At the end of the said 9th finding of facts the following words shall be and they are hereby inserted: "That the quantity of water necessary to irrigate the John Neff tract of land is .3 cu. ft. per sec. of time."

That at the end of paragraph 4 of the third conclusion of law, the following words shall be, and they are hereby added: "That John Neff is entitled to a decree awarding to him the use during the irrigation season of each year for the purpose of irrigating his land .3 cu. ft. of water per sec. of time, such water to be taken thru the Galena canal, and to be measured at the point of diversion from said canal.

At the end of paragraph 3 of the decree the following words shall be and they are hereby added: "That the defendant, John Neff, is the owner of the right to the use of .3 cu. ft. of water per sec. of time during the irrigation season of each year for the purpose of irrigating his land, such water to be taken thru the Galena canal, and to be measured at the point of diversion from said land."

Dated August 10, 1901.

advised in the premises, makes and files the following:

FINDINGS OF FACT.

I.

That a copy of the report of the commissioner, heretofore appointed by the court, which was filed with the clerk of this court on the 7 day of Dec. 1901, was duly served upon each and all of the parties to this action.

II.

That due and legal notice of the time and place of hearing upon the petition for the confirmation of said report was given to each and all of the parties to this action.

III.

That in the proper performance of the duties of his office, said commissioner has caused to be constructed, at the expense of $345.73, three gates at the impounding dam in the Jordan River, and a weir, having 2 crests of [illegible] ft. each, at a point in said river near the power plant in the Jordan Narrows.

IV.

That the construction of said gates and weir were necessary, and the maintenance of the same is essential to the proper and economical distribution of the waters of the said Jordan River to the parties entitled to the use of the same as provided by the decree of this court heretofore made, rendered and entered herein. That all of the parties to this action are benefited thereby, and that the allegation contained in the written objections, filed herein by the defendants, Bennion & Bennion, the Beckstead Irrigation Co., A.J. Smith, James Blake, Chas. Blake, W.R. Hollington, A.C. Lunnon, A.L. Lunnon, Henry Osborne, John Neff, Sarah E. Stewart, John Wilson and the South Jordan Milling Co., are not sustained by the evidence.

V.

That the proportion of the said $845.76, which each of the parties to this action should pay, is, as equitably as can be determined by legal evidence, as follows, to-wit:

West Jordan Milling & Merc. Co.	85.80
Utah Mattress & Manf. Co.	31.46
United States Mining Co.	48.62
Wm. Cooper, Jr.	85.78
Bennion & Bennion	112.83
Awarded farms on Gardiner mill race	11.15
Awarded farms on Galena Canal	14.00
Awarded farms on Bennion & Bennion mill race	14.30
Beckstead Irrigation Co.	21.32
Lousley ditch	5.72
Awarded farms on Cooper mill race	8.29
South Jordan Milling Co.	65.78
Salt Lake City Water & Electrical Power Co.	57.20
South Jordan Canal Co.	57.20
East Jordan Irrigation Co.	57.20
Utah & Salt Lake Canal Co.	57.20
North Jordan Irrigation Co.	57.20
Salt Lake City	57.20

And as conclusions of law from the foregoing facts, the court finds:

That a judgment and decree should be entered herein, confirming and approving the said report of said commissioner and adjudging that each of the parties to this action, within 15 days from the date of the entering of this decree herein, pay to the clerk of this court, to be by him paid to said commissioner, the sum heretofore found in finding 5, to be their equitable proportion of the said expense incurred by said commissioner:

DECREE.

In accordance with the foregoing findings of fact, it is hereby ordered, adjudged and decreed, that the report of J. Fewson Smith, Jr., the commissioner heretofore appointed by this court, filed on the 7 day of Dec. 1901, be, and that the same is hereby confirmed and approved; and it is further ordered, adjudged and decreed that the parties to this action pay to the clerk of this court, on or before the ..... day of Jan. 1902, the same to be paid by the said clerk to the said commissioner, the sums hereinafter named, and that in default of such payment that execution issue therefor, or that such other and further process issue as may be necessary for the enforcement of the payment thereof.

West Jordan Milling & Merc. Co.	8[illegible].20
Utah Mattress & Manf. Co.	71.46
United States Mining Co.	48.82
R. Cooper, Jr.	65.78
Dennion & Dennion	112.83
Awarded Farms on Gardiner mill race	15.16
Awarded Farms Galena Ditch	14.50
Awarded Farms on Dennion & Dennion mill race	14.50
Beckstead Irr. Co.	[illegible].32
Dudley ditch	[illegible].72
Awarded Farms on Cooper mill race	8.20
South Jordan Milling Co.	5[illegible].78
Salt Lake City Water & Electric Power Co.	57.20
South Jordan Canal Co.	57.20
East Jordan Irrigation Co.	57.20
Utah & Salt Lake Canal Co.	57.20
North Jordan Irr. Co.	57.20
Salt Lake City	57.20

Dated January 13, 1902.

(Title of Court and Cause)

In this cause the matters arising upon the petition of the North Jordan Canal Co., one of the defendants herein verified and filed on the 23 day of Apr. 1906, in pursuance of an order made in this cause by this court on the 20 day of Apr. 1906, and upon the answers thereto by the defendants, the Utah and Salt Lake Canal Co., the East Jordan Irrigation Co., the South Jordan Canal Co., and Salt Lake City, and various other of the defendants herein pursuant to adjournment, came on for hearing before this court on the 29th day of May, 1906, at which time the parties herein appeared before said court, and the hearing upon the matters arising thereon came on to be heard and the hearing thereof continued to and including the 31st day of May 1906, each of the said parties appearing by their respective attorneys.

And the court, after having heard the proofs and allegations of all the parties, and the argument of counsel thereon, and it appearing to the court that the allegations of the petition of the said North Jordan Canal Co. are true as therein set forth; and that during the irrigation season of 1904 the said North Jordan Canal Co. entered into a contract with the Utah and Salt Lake Canal Co. by which it was agreed that the North Jordan Canal Co. would transfer during said season a portion of the water decreed to it by the final decree in this cause, and directed the said commissioner of this court, J. Fewson Smith, Jr., to deliver to said Utah & Salt Lake Canal Co. the waters so assigned, and that the said commissioner refused such distribution in pursuance of said contract, but on the contrary, claimed that the said North Jordan Canal Co. had no right to make such transfer, but that if the said North Jordan Canal Co. could not use all the water so decreed to it, that such portion of said water should be equally distributed among the other canal and irrigation companies and the city of Salt Lake.

And it further appearing that since the making of the final decree herein that the various canal and irrigation companies, together with Salt Lake City, had installed four pumps at the intake of the Jordan River, with which to pump water from the common reservoir belonging to them, to-wit, Utah Lake, and that the said pumps were installed at their joint and common expense and cost in equal proportions, and that since the installation of said four pumps the said canal and irrigation companies and Salt Lake City, other than the North Jordan Canal Co., had installed a fifth pump, and it has been in operation pumping water from said Utah Lake, and that such waters so pumped have been distributed among and to Salt Lake City and the canal and irrigation companies other than the North Jordan Canal Co.

And it further appearing that the above mentioned five pumps are insufficient to furnish said city and the said four canal companies, including the North Jordan Co., with the quantity of water awarded to them under the decree, it is further ordered that said city and said canal companies, or such of them as desire to participate in the expense thereof, have the right to install a sixth pump and to operate the same. And by means thereof to pump water from Utah Lake to supply their necessities, not exceeding the amount awarded them, respectively, under said decree, when the gravity flow from said lake, is insufficient to supply them, respectively, with the amounts awarded under said decree.

And it further appearing that the North Jordan Canal Co. is now desirous of joining in said fifth pump unpon condition that they should have the right to participate and have an equal share of the water so pumped from Utah Lake by said fifth pump, up to the amount awarded to it by final decree herein, to-wit, one-fifth of 600 cu. ft. per sec. over and above the prior rights decreed by the final decree herein to prior claims. And should said North Jordan Co. desire to join said city and said other canal companies in their installation of said sixth pump, it shall have the right so to do. The expense of the installation of the said fifth pump having been already paid by said city and said canal companies, other than the North Jordan Co., upon participating in the benefits thereof the North Jordan shall pay to said city and said companies one-fifth of the cost of installation thereof, less reasonable depreciation on account of use, or a pro rata share of such cost, according to the rights of said parties under said decree, as they may agree and elect. And the cost of the installation of the sixth pump shall be paid by the parties installing the same, and should all of said parties not join in the installation they may at any time hereafter become owners therein and participate in the benefits thereof by the payment of one-fifth of the cost of the installation, less reasonable depreciation on account of use, or a pro rata share, according to their respective rights under said decree, as they may agree and elect.

It is further ordered by the court that the said sale and transfer of waters so made in 1904 by said North Jordan Canal Co. to the Utah & Salt Lake Canal Co. was a valid transfer, and the said North Jordan Canal Co. had the right to make such transfer and sale, and the said Utah & Salt Lake Canal Co. had the right to make purchase thereof from said North Jordan Canal Co; that it was the duty of the Commissioner to observe and obey the directions and instructions of the said North Jordan Canal Co., to turn the said water to the said Utah & Salt Lake Canal Co., and under and by virtue of the terms of the decree herein, each of said canal and irrigation companies and Salt Lake City have the right to sell and to transfer the waters so decreed to them, respectively, subject only to the limitations upon such rights of transfer as are provided by law; and that it is the duty of the commissioner appointed by this court to make such transfers effective when so directed.

It if further ordered and directed that the North Jordan Canal Co. have the right to join with the other canal and irrigation companies and Salt Lake City in the pump now installed by them other than the North Jordan Canal Co., by paying their equal one-fifth part of the expense of such installation, and that the said North Jordan Canal Co. have the right to join with the said canal and irrigation companies and Salt Lake City in the installation of any pumps by which water is taken from the common reservoir belonging to them, to-wit, Utah Lake, up to the amount decreed to it by the final decree herein, to-wit, an equal undivided one-fifth of the waters of the Jordan River; and at all times when the flow of said river shall not exceed 600 cu. ft. per sec. over and above the prior rights decreed by said decree to prior claims, upon paying their equal one-fifth share of such installation.

And it appearing to the court that the refusal of the said J. Fewson Smith, Jr., commissioner of this court, to distribute the waters so transferred by the said North Jordan Canal Co. and the said Utah & Salt Lake Canal Co. as hereinbefore set forth, was made in good faith and only because he was doubtful as to the legal rights of the parties, to-wit, the South Jordan Canal Co. and the East Jordan Irrigation Co.

Therefore, the court adjudges that such refusal was in good faith and without intention to deprive any of the parties of their legal rights, and only because he desired the direction of this court in the premises.

This order is made without prejudice to any rights of parties to this action, other than the four canal companies and Salt Lake City, and any party to this action shall have the right at any time to apply to the court for such order as may be necessary to prevent the rights awarded them under the decree in this action being injuriously affected by the carrying into effect of the provisions of this order.

44-Morse Orders and Decrees

(Title of Court and Cause)

That matter of the application of the Utah & Salt Lake Canal Co., one of the plaintiffs in the above entitled cause for permission to install a seventh pump, pursuant to adjournment, coming in regularly to be heard this .... day of Nov. 1905; the said Utah & Salt Lake Canal Co., the East Jordan Irrigation Co., the South Jordan Canal Co., the North Jordan Canal Co., and Salt Lake City, appearing by their respective counsel, and the court having heard the proofs produced by said respective parties and the arguments of counsel, and having duly considered the same, find:

I.

That the above named parties were plaintiffs and defendants in this action, and by the terms of the decree herein were adjudged to be the owners of the right to the use of the following quantities of the waters of the Jordan River and Utah Lake, to-wit:

Utah & Salt Lake Canal Co.	240 sec. ft.
East Jordan Irrigation Co.	170 sec. ft.
Salt Lake City	150 sec. ft.
South Jordan Canal Co.	142 sec. ft.
North Jordan Canal Co.	120 sec. ft.

Subject to the prior rights of the other parties to this action, as adjudged by said decree; and that said city and said canal companies were also adjudged to be owners of the right to store and impound the waters of Utah Lake to a height known as Compromise Point; and to release and discharge such impounded waters at such times and in such quantities as they might deem necessary and expedient for their use.

II.

That since the making of said decree, said city and said canal companies have installed four pumps near the intake of the Jordan River from said Utah Lake, and said city and said canal companies, with the exception of the North Jordan Co., have installed a fifth pump at said point; and by order of this court duly made on or about the 22 day of June 1905, permission was granted said companies to install a sixth pump at said point, said order being made without prejudice to the rights of the other parties to this action.

III.

Utah and Salt Lake Canal Co., the East Jordan Irrigation Co., the South Jordan Canal Co., and the North Jordan Irrigation Co., shall have an equal right to the use of all such waters, to the extent of the capacity of their several canals, and, while there is sufficient water for that purpose, may each take the full quantity of water their respective canals will carry, and, when the water is insufficient to fill all the canals to their maximum capacity, then the city and canal and irrigation companies shall be entitled to an equal division thereof; provided, that if by such division one-fifth of the water should exceed the capacity of any of the canals, such excess may be used by such remaining canals as have the capacity to take the same in equal proportions; and during the winter or non-irrigation season, each of said canal companies shall have the right to the use of ten cu. ft. of water per sec. of time in their several canals, for the purpose and use of their stockholders for culinary and domestic purposes.

VIII.

That the defendant, the South Jordan Milling Co., a corporation, is the owner of the right, for the operation of its mill to the use of 23 cu. ft. per sec. of the water required, as hereinbefore set forth, to flow thru the channel of the river for the use of the claimant diverting water below the location of the mill, such water to be taken thru the Beckstead canal and measured at the pen stock of said mill and to be returned to the river at a point opposite the location of said mill.

IX.

That the Salt Lake City Water & Electrical Power Co. is the owner of and entitled to the right to use all waters of the Jordan River flowing in and thru the channel thereof, at and above a point on said river where the power plant of said co. is situated, to the use of which the several persons and claimants diverting the waters of the river north and below the said power plant are entitled as appropriators, with fixed and primary rights, as awarded by this decree, and to convey such water to its power plant for use in the operation of the same, and to deliver the same, after such use back into the river, undiminished in quantity and unimpaired in quality, at a point opposite the place of use by the said co. Also in the same manner the right to convey to its said power plant, and use for the purpose of operating the same, all the waters of the river to which the South Jordan Canal Co. is entitled by this decree and to take into its canal and to deliver back into the canal of the said South Jordan Canal Co., after such use, all of said water, undiminished in quantity and unimpaired in quality, in accordance with the terms of the license granted dependent upon said pumps for water to fill their canals, and six pumps are insufficient to furnish them the quantity of water to which they are entitled under said decree. That in order to supply the said Utah & Salt Lake Canal Co. with the water to which it is entitled under said decree, and which is necessary to irrigate the lands of its stockholders, it is necessary that a seventh pump be installed.

IV.

That in order that said pump may be run economically and effectively, and be properly supervised and controlled by the commissioner of this court, it is necessary that they be operated as a single enterprise and under one management, and that the said city and said canal companies pay for the operation and maintenance of the same, in proportion to the quantity of water taken by each thru its respective canal.

Now there, in consideration of the premises and the foregoing facts, it is ordered:

That the Utah & Salt Lake Canal Co. be and it is hereby granted and given the permission to install in Utah Lake, near the intake of the Jordan River, where the other pumps heretofore installed by Salt Lake City and said canal companies are located, a seventh pump, at its individual expense; but under the express conditions, however, that said city and said East Jordan Co., South Jordan Co., and North Jordan Co. shall each have the right to equally participate in the installation thereof by paying a proportion of the cost of its installation to an amount not less than one-fifth of the cost thereof; and that each of said companies shall be entitled to the use of such proportion of the waters flowing from said pump as is represented by the proportionate costs thereof paid by them; and each of said companies shall have the the right at any time after the installation of said pump, to become equally interested in said pump by paying to the companies installing the same a proportion of the costs thereof to an amount not less than one-fifth of the same. The quantity of water to be taken by any of said companies from all of said pumps shall not at any time exceed the amount of water awarded to them respectively by the decree in said cause, as heretofore stated. And said pump, when installed, shall be operated in connection with the other pumps now installed and the sixth pump to be installed. And said city and said canal companies shall pay for the yearly operation, maintenance, and care of said pumps to the cost of the installation of which they have contributed in proportion to the amount of water drawn by each during such year.

And said seventh pump shall be operated under the direction of the commissioner of this court, in such years and during such periods of time in the year as he shall deem proper and expedient, to the end that the respective parties interested in said seventh pump shall receive the quantities of water they are respectively awarded by the decree of this cause, without interfering with the rights of the parties under the terms of this decree not interested in said pump. And in case said city or either of said canal companies shall be dissatisfied with the acts of the Commissioner in this regard, they may upon three days notice to said Commissioner and the remaining companies, apply to this court for a review of the acts and orders of such Commissioner, and for such order in regard to the operation of said seventh pump as may seem just and proper.

This order is made without prejudice to any rights of the parties to this action other than the 4 canal cos. and Salt Lake City, and any party to this action shall have the right at any time to apply to the court for such order as may be necessary to prevent the rights awarded them under the decree in this action being injuriously affected by the carrying into effect of the provisions of this order.

Dated this 12th day of December 1906.

(Title of Court and Cause.)

This case coming on regularly to be heard the 26th day of May 1906, on the petition and claim of said Ida A. Neff, Carl Jensen, James Anderson, Naomi Hardcastle and Jane A. Jones, intervenors herein, for an order of this court to J. Hesson Smith, (The Commissioner heretofore appointed by the Court, (among other things) to apportion, under the order of this Court, the waters of the Jordan River conducted and flowing thru the Galena Canal), and directing him, said commissioner, to deliver to said five intervenors, during the irrigation season, irrigating water for their cultivated lands lying under said canal:

And it appearing from the report of said Commissioner and the evidence submitted to the court that the number of acres heretofore cultivated and the amount of water heretofore used thereon by said 5 intervenors for the irrigation of their said lands respectively are as follows, to-wit:

Ida A. Neff, 30 acres, with 63/100 of a cub. ft. of water per sec.

#07-Morse Orders and Decrees

(Title of Court and Cause)

SUPPLEMENTAL DECREE.

On motion of Harrington & Sanford, attorneys for intervenor, Eliza Annie Neff, and there appearing to be sufficient reasons therefor, it is hereby ordered that the decree, findings and conclusions in this case or either of them, wherein they inadvertently refer to intervenor, Eliza Annie Neff, as "Annie Eliza Neff", be corrected to read Eliza Annie Neff, the true name of the intervenor, and all rights decreed in this case to Annie Eliza Neff are intended for and hereby decreed to Elliza Annie Neff.

This order is intended as supplemental to the decree in this case, and is made for the purpose of dorrecting the mistake and inadvertance aforesaid.

Dated this 3rd day of Aug. 1901.

(Title of Court and Cause)

SUPPLEMENTAL FINDINGS OF FACT AND DECREE NO. 1.

The matter of confirmation of the report of J. Fewson Smith, Jr., the commissioner, heretofore appointed by the court in this cause, filed Dec. 7, 1901, came on regularly to be heard on the 21 day of Dec. 1901, and the further hearing thereon was continued until the 27 day of said month, issue being raised thereon by the objections in writing thereto of the defendants, Pennion & Pennion, who were represented by J.H. Moyle, their counsel, and of the defendant, the Beckstead Irrigation Co., who was represented by Stewart & Stewart, its counsel, and of the defendants [illegible] Smith, James Blake, Chas. Blake, [illegible] Wellington, [illegible].C. Lunnen, A.[illegible] Lunnen, Henry Osborne, John Neff, Sarah [illegible] Stewart and John Wilson, who were represented by Stewart & Stewart, its counsel, [illegible] Richards, Esq., appearing on the part of Salt Lake City and the Utah and Salt Lake Canal Co., and [illegible], on the part of the East Jordan Canal Co., and John [illegible] Cannon, on the part of the South Jordan Canal Co., there being no appearance on the part of the other parties to the action, and the court having heard the proofs produced by the respective parties, and being now fully

Messrs. [illegible] Smith, their counsel, and of the defendant, the North Jordan Milling Company, who was represented by

Carl Jensen, 14 acres with 28/100 of a cu. ft. of water per sec.

Naomi Hardcaslte, Tamar Anderson and Jane A. [illegible] (the three jointly) 10 acres with 20/100 of a cu. ft. of water per sec.

And that said 5 intervenors and their predecessors in interest have been continuously using said water on said lands since about the year 1874;

And it further appearing that the Board of Presidents and Agents of the various Canal Cos., plaintiffs, defendants and intervenors herein, have consented to the award to said 5 intervenors of 7/10 of a cu. ft. per sec. to be divided among them according and in proportion to their respective interests as aforesaid, and said 5 intervenors agree to accept said last mentioned amount of water in satisfaction of their claims:

And all of said parties being present in Court by their respective attorneys and assenting thereto,

It is ordered that J. Fewson Smith, Commissioner as aforesaid during the irrigating season of each and every year, deliver to said 5 intervenors 7/10 of a cu. ft. of water of the Jordan River thru the Jordan Canal and apportion the same among them according to their respective interests as hereinbefore mentioned and set forth.

Tab E

IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF UTAH

IN AND FOR UTAH COUNTY

* * * * * * * * * *

Booth [illegible] #2
June 5, 1907

Salt Lake City, a municipal corporation, Utah & Salt Lake Canal Company, a corporation, East Jordan Irrigation Company, a corporation, North Jordan Irrigation Company, a corporation, and South Jordan Canal Company, a corporation, Plaintiffs. -vs- James [illegible] Gardner and [illegible] J. Evans, Defendants.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECREE

* * * * * * * * * *

This cause came on regularly to be heard upon the complaint of plaintiffs, the answer and counter-claim of defendants, and the reply of plaintiffs thereto, before the court sitting without a jury, on the 17th day of May, 1907, and the hearing thereof was continued from day to day up to and including the 27th day of June, 1907, Ogden Hiles, Esq., appearing as attorney for Salt Lake City, Messrs. Richards, Richards & Ferry as attorneys for Utah and Salt Lake Canal Company, Messrs. Rawlins and Ray as attorneys for the East Jordan Irrigation Company, H. P. Henderson, Esq., as attorney for the North Jordan Irrigation Company, John M. Cannon Esq., as attorney for the South Jordan Canal Company, and Messrs. Thurman, Wedgwood & Irvine as attorneys for the defendants, and the court having heard the proofs produced by the respective parties, and the arguments of counsel, having duly considered the same, being now fully advised in the premises, makes and files the following:

FINDINGS OF FACT

I

That the plaintiff, Salt Lake City, is and during all the times mentioned in the pleadings herein has been a municipal corporation in Salt Lake County, Utah, duly organized and existing under the laws of Utah, and that each of the other plaintiffs, the Utah & Salt Lake Canal Company, the East Jordan Irrigation Company, the North Jordan Irrigation Company, and the South Jordan Canal Company, are and during all the times mentioned the pleadings herein, have been corporations, duly organized and existing under the laws of Utah, for the purpose of acquiring, owning, holding, controlling, and using water and water rights for irrigation, culinary and domestic purposes, and other beneficial uses, with their principal places of business in Salt Lake City and County, State of Utah.

II

That Utah Lake is a natural body of water, situated in Utah County, State of Utah, having an area, when its waters are at the level of what is commonly known as "Compromise Point," of 93,000 acres, and the waters thereof are supplied by numerous springs and streams, tributary thereto.

That the Jordan River is a natural stream of water, having its head or source in Utah County at the northern end of Utah Lake, and is the only outlet thereof; that from its said source said Jordan River flows in a general northerly direction through said Utah County and through a portion of Salt Lake County, Utah, and naturally empties into Great Salt Lake, and that the level of the water in Utah Lake and the volume of water flowing from said lake into, in and through said Jordan River naturally varies one year with another, and at different times and seasons in the same year.

III

That in the year 1879 the plaintiff Salt Lake City, for the purpose of supplying water to the inhabitants of said City for domestic, irrigation and municipal uses, constructed a canal in Salt Lake County, Utah, from said Jordan River at a point near the "Jordan Narrows", to and through said City, having the capacity to carry 150 cubic feet of water per second, which said canal was completed in the year 1882, and ever since said date said city has diverted and conveyed through said canal for the purposes aforesaid, during what is commonly known as the irrigation season of each and every year, such volume and quantity of waters of said river as were necessary to supply its necessities for the purposes above mentioned, and a portion of the waters so conveyed through said canal has been exchanged by said city for other water flowing in mountain streams, which was and is purer and better for domestic and culinary purposes, and which, so far as the city has been able to utilize the same, and has been used through the water work system of said city for the domestic and culinary uses of its inhabitants for fire-hydrants, sprinkling streets and lawns, and other municipal purposes, and the remainder of the waters flowing through said canal have been used by said city and its inhabitants for irrigation, sprinkling streets, flushing sewers and other necessary and beneficial and municipal uses.

IV

That in the year 1882 and prior thereto, the plaintiff, Utah & Salt Lake Canal Company, constructed a canal in Salt Lake County, Utah, from said Jordan River, at a point near the boundary line between Salt Lake County and Utah County, down to and upon the lands of its stockholders, having the capacity to carry 246 cubic feet of water per second, and thereupon the said plaintiff diverted and conveyed through said canal for the domestic and irrigation purposes of its stockholders, including the watering of livestock, during the irrigation season of each and every year, a portion of the flowing waters of said Jordan River, the volume so diverted varying one year with another, according to the necessities of said plaintiff and the volume of water flowing in said Jordan River, and by means of the water so diverted has brought under irrigation 16,000 acres of land, but all of said lands have not been irrigated and cultivated every year; that during the non-irrigation season of each year said plaintiff has used, through said canal, such volume of waters flowing in said Jordan River as were necessary for the domestic and culinary purposes of its stockholders to the extent of 10 cubic feet per second.

V

That in the year 1882 and prior thereto, the plaintiff, North Jordan Irrigation Company constructed a canal in Salt Lake County, Utah, from said Jordan River down to and upon the lands of its stockholders and others, having a capacity to carry 120 cubic feet of water per second; and thereupon said plaintiff diverted and conveyed through said canal for the domestic and irrigation purposes of its stockholders, including the watering of livestock, during the irrigation season of each and every year, a portion of the flowing waters of said Jordan River, the volume so diverted varying one year with another according to the necessities of said plaintiff, and the volume of water flowing in said Jordan River, and by means of the water so diverted has brought under irrigation 8,000 acres of land, but all of said lands have not been irrigated and cultivated every year. That during the non-irrigation season of each year said plaintiff has used through said canal such volume of the waters flowing in said Jordan River as were necessary for the domestic and culinary purposes of its stockholders, to the extent of 10 cubic feet per second.

VI

That in the year 1882, and prior thereto, the plaintiff, East Jordan Irrigation Company constructed a canal in Salt Lake County, Utah, from said Jordan River at a point near the boundary line between Salt Lake County and Utah County, Utah, down to and upon the lands of its stockholders and others, having a capacity to carry 170 cubic feet of water per second, and thereupon the said plaintiff diverted and conveyed through said canal for the domestic and irrigation purposes of its stockholders, including the watering of livestock, during the irrigation season of each and every year, a portion of the flowing waters of said Jordan River, the volume so diverted varying one year with another according to the necessities of said plaintiff, and the volume of water flowing in said Jordan River, and by means of the water so diverted has brought under irrigation 16,000 acres of land, but all of said lands have not been irrigated and cultivated every year. That during the non-irrigation season of each year, said plaintiff has used through said canal such volume of the waters flowing in said Jordan River as were necessary for the domestic and culinary purposes of its stockholders, to the extent of 10 cubic feet per second.

VII

That in the year 1882, and prior thereto, the plaintiff South Jordan Canal Company constructed a canal in Salt Lake County, Utah, down to and upon the lands of its stockholders and others, having capacity to carry 142 cubic feet of water per second; and thereupon the said plaintiff diverted and conveyed through said canal for domestic and irrigation purposes of its stockholders, including the watering of livestock, during the irrigation season of each and every year, a portion of the flowing waters of said Jordan River, the volume so diverted varying one year with another according to the necessities of said plaintiff, and the volume of water flowing in said Jordan River, and by means of the water so diverted has brought under irrigation 9,000 acres of land, but all of said lands have not been irrigated and cultivated every year. That during the non-irrigation season of each year said plaintiff has used through said canal such volume of water flowing in said Jordan River as was necessary for the domestic and culinary purposes of its stockholders, to the extent of 10 cubic feet per second.

VIII

That the irrigation season in Salt Lake County, Utah, where the lands of plaintiffs' stockholders are located, comprises a period of approximately 180 days duration, ordinarily commencing in April and ending in October, the date of its commencement and ending varying in different years one with another by reason of climatic conditions; and where the volume of the flow of the waters used for irrigation is under the control of the irrigator during the entire irrigation season, less water is required, in irrigation seasons of normal climatic conditions, during the early and latter part of such season, than during the major and intervening portion thereof.

That after the construction of the canals, as aforesaid, plaintiffs, in order to conserve and equalize the flow of the waters of the Jordan River during the irrigation season, constructed dams and dredged the channel of said river, and entered into a contract with the owners of the lands bordering on Utah Lake, by the terms of which the said plaintiffs were granted the right to raise and maintain the level of the water in said lake to and at an elevation of three feet and three and one-half inches above low water mark, which said elevation is known as "Compromise Point", which said point is 4515.8 feet above sea level and is marked by monuments placed on the shores of said lake. That under the terms of said contract the substantial control of said dam was placed in the hands of what is known as the Utah Lake Commission, the purpose of said commission being to so control the flow of the water in the Jordan River by means of said dam during the non-irrigation season that the level of the water in said lake at the commencement of the succeeding irrigation season should reach, but not exceed, the level of Compromise Point.

That in the year 1902, in order to secure a greater flow of water from said Utah Lake than the natural gravity flow during years of less than normal precipitation, and to control and regulate the flow therefrom in any season to such quantity as from time to time during the varying irrigation seasons should be necessary for their use, plaintiffs installed pumps at the head of the Jordan River, the outlet of said lake, and added to the number thereof, until, in the year 1905 a total of five were installed, each having a rated capacity of one hundred cubic feet of water per second, and at the time of the trial of this action seven had been installed, all having a total rated capacity of seven hundred cubic feet of water per second, and by means of said pumps the volume of the flow of the water from said lake during the irrigation season when the level of the lake is at or below Compromise Point, has been, and can be controlled so as to meet and satisfy the needs and necessities of plaintiffs, as their needs may vary at different times during the same irrigation season.

That the combined carrying capacity of plaintiffs canals, as hereinbefore described, is 828 cubic feet of water per second, but plaintiffs have not used or taken into their said canals that quantity of water except at times during the early part of the high water season. That in order to supply a volume of 828 cubic feet of water per second, flowing naturally through said Jordan River, the waters of Utah Lake must stand at an elevation of over one foot above Compromise Point, as hereinbefore described, and the volume of the flow from said lake through said river diminished as the elevation of the level of the water in said lake recedes, until, at the elevation of Compromise Point the discharge from said lake through said river is of the volume of 505 cubic feet of water per second. That whenever the level of the lake is above Compromise Point plaintiffs' said pumps are not available and the quantity available for use in plaintiffs' canals depends upon the volume of the gravity flow, and when the elevation of said lake is at or below Compromise Point, if said pumps are used at all, all of the water taken into plaintiffs' canals must be drawn from said lake by and pass through plaintiffs' said pumps.

IX

That prior to the installation of said pumps the greatest quantity of water available from said Utah Lake and said Jordan River during the irrigation season of any year for plaintiffs' use and the use of the owners of rights to the use of water of said lake and river, prior to the rights of said plaintiffs, was 160,482 acre feet, the same being the equivalent of a continuous flow of approximately 445 cubic feet of water per second during a period of 180 consecutive days, and the average yearly quantity of the flow of said river during the irrigation season, available for the use of plaintiffs and the parties owing rights prior to the rights of the plaintiffs, was a quantity equal to 111,360 acre feet, the same being the equivalent of approximately 307 cubic feet of water per second, flowing continuously for a period of 180 days.

That in the year 1905, and after five pumps had been installed by plaintiffs, as aforesaid, plaintiffs drew from said river and lake for their use and the use of the parties owing rights to the use of the waters of said river prior thereto, approximately 136,000 acre feet, the same being the equivalent of a flow of approximately 378 cubic feet of water per second continuously for a period of 180 days; and during the year 1906 plaintiffs drew from said lake by means of said five pumps for their use and the use of the owners of prior rights, 130,000 acre feet, the same being the equivalent of a flow of approximately 362 cubic feet per second, continuously for a period of 180 days.

That the greatest quantity of water used by plaintiffs Salt Lake City during any one year since the installation of said pumps has been 13,500 acre feet, the same being the equivalent of a flow of 37.5 cubic feet of water per second for a period of 180 consecutive days.

X

That the aggregate number of acres which have been brought under irrigation by the plaintiffs other than Salt Lake City, is 49,000 acres, and the maximum contemplated necessities of the plaintiff Salt Lake City will be fully satisfied by a quantity of water equal to 36,000 acre feet, supplied during the irrigation season, as hereinbefore defined, at the headgate of said plaintiffs' canal.

That a quantity of water equal to three (3) acre feet per acre measured at the head-gates of plaintiffs' respective canals, is a sufficient quantity of water to irrigate the lands of plaintiffs, and an aggregate of one hundred forty-seven thousand (147,000) acre feet, measured at the respective headgates of plaintiffs' canals, other than the plaintiff Salt Lake City, is a sufficient quantity of water to properly irrigate the forty-nine thousand (49,000) acres of land which have been brought under irrigation by said plaintiffs, when the volume of the flow of said one hundred forty-seven thousand (147,000) acre feet can be controlled and applied to the lands, as it can be by plaintiffs, at such times and in such quantities as the necessities of proper irrigation require, which necessities vary with the varying climatic conditions of different irrigation seasons.

That two thousand (2,000) acre feet, measured at their respective headgates, is a sufficient quantity of water, when used as necessary throughout the irrigation season, to supply the necessities of the plaintiffs, other than Salt Lake City, for culinary, domestic and all beneficial uses, excepting irrigation.

That thirty-six thousand (36,000) acre feet, measured at the head gates of its canal, and used in such volume as from time to time may be necessary through the irrigation season, is a sufficient quantity of water to satisfy all the needs and necessities of the plaintiff Salt Lake City.

That one hundred eighty-five thousand (185,000) acre feet measured at the headgates of their canals, is a sufficient quantity of water, when used at such times and in such quantities as their necessities require, to satisfy the needs and necessities of the plaintiffs in this action for irrigation, municipal, culinary and all domestic purposes, the same being the equivalent of a continuous flow of approximately five hundred fifteen (515) cubic feet of water per second during the irrigation season of 180 days.

XI

That during years of normal precipitation, and when the elevation of the water in Utah Lake is not higher than Compromise Point, the waters flowing into said lake are sufficient to supply, and said lake can be depended upon to supply a quantity of water equal or in excess of 210,000 acre feet during the irrigation season, as hereinbefore defined, without in any manner whatever interfering with the operation of plaintiffs' pumps, and leave a residue in said lake of more than 100,000 acre feet.

XII

That certain persons and corporations, not parties to this action, are the owners of the right to the use of certain quantities of the waters of the said Jordan River, and said rights are prior and superior to the rights of the plaintiffs in this action, said prior rights being as follows, to-wit:

Hyrum Bennion, et al, taking the water for irrigation purposes from what is known as the Bennion & Bennion Mill-race, five cubic feet of water per second during the irrigation season of each year: feet of water per second during the Hyrum Bennion and Samuel Bennion, partners of Bennion & Bennion, forty (40) cubic feet of water per second for the operation of their mill, located upon the Bennion & Bennion Mill-race during the times when their said mill is in operation, to be measured at the entrance to the penstock of said mill; The West Jordan Milling Company, a corporation, thirty-(30) cubic feet of water per second for the operation of its mill, to be taken through the Gardner Mill-race and measured at their respective points of diversion from said mill race entrance to the penstock of said mill: John A. Egbert, et al., taking water through the Gardner mill-race for irrigation purposes during the irrigation season, five and three-tenths (5.3) cubic feet of water per second to be measured at the point of diversion from said mill race; The Utah Mattress Factory, a corporation, eleven (11) cubic feet of water per second for the operation of its factory, such water to be taken through the Gardner Mill-race and measured at the entrance to the penstock of said facotyr: Absolan W. Smith, W. R. Wellington, A. C. Lunnen, A. B. Lunnen, James Blake and Charles Blake, for irrigation purposes during the irrigation season, two and eight hundred twenty-five thousandths (2.825) cubic feet of water per second, to be taken through the Galena Canal and measured at the points of diversion from said Canal: Sarah E. Stewart, for irrigation purposes during the irrigation season, one and four-tenths (1.4) cubic feet of water per second, to be taken through the Galena Canal and measured at the point of diversion from said canal; Henry Osborne, for irrigation purposes during the irrigation season, fifty-four one-hundredths (.54) cubic feet of water per second, to be taken through the Galena Canal and measured at the point of diversion from said canal; John T. Wilson, for irrigation purposes during the irrigation season, three tenths (.3) of a cubic foot of water per second, to be taken through the Galena Canal and measured at the point of diversion from said canal; The United States Mining Company, a corporation, seventeen (17) cubic feet of water per second for the operation of its mill, to be taken through the Galena Canal and measured at the entrance to the penstock of said mill; the Beckstead Irrigation Company, a corporation, twelve (12) cubic feet of water per second for irrigation purposes during the irrigation season, to be taken through the Beckstead Ditch, such quantity thereof as is taken above the mill of the South Jordan Milling Company, to be measured in the weirs in the lower bank of said ditch, and the waters opposite said mill, and said Beckstead Irrigation Company is also the owners of the right to the use of four (4) cubic feet of water per second for domestic and culinary purposes of its stockholders during the non-irrigation season.

Lewis H. Mousley, et al., taking water through the Mousley Ditch for irrigation purposes during the irrigation season, two (2) cubic feet of water per second, to be measured at the intake of said ditch; William Cooper Jr., twenty-three (23) cubic feet of water per second for the operation of his mill upon the Cooper Mill-race to be measured at the entrance to the penstock of said mill, John Neff, for irrigation purposes during the irrigation season, one and four-tenths (1.4) cubic feet of water per second, to be taken through the Cooper Mill-race and measured at the point of diversion therefrom; Anna E. Neff, one and two-tenths (1.2) cubic feet per second, for irrigation purposes during the irrigation season, to be taken through the unimpeded channel of said Jordan river, such quantities of the water of said river as will, when added to the accretions to said river through seepage and other sources, furnish at the various points of diversion and measurements, the several quantities of water hereinbefore stated to be prior rights to the rights of the plaintiffs herein and to the waters of said river, but it was expressly provided in said decree that in all cases where the waters of said river are diverted and used by said prior claimants for beneficial uses, and after such uses are delivered to the use of any of the owners of said prior rights, the quantity so delivered for subsequent uses shall be to the extent thereof so delivered, the quantity awarded by said decree to such users, as hereinbefore stated and set forth.

XIII

That on the 15th day of September, 1905, the defendants herein filed their application to appropriate of the waters of Utah Lake a quantity equal to a flow of water of forty (40) cubic feet per second from April 1st to November 1st in each and every year, the same being the equivalent of 24,000 acre feet. That due publication of the notice of said application was made, as required by law; that within the time provided by law plaintiffs herein, in due form, filed their protest against the granting of said application by said State Engineer. That on the 20th day of June, 1906, the said Caleb Tanner, State Engineer of the State of Utah, approved said application of the defendants and endorsed his approval thereon.

XIV

That during all the times mentioned in plaintiffs' complaint there have been and now are large areas of barren, sterile and desert lands situated in Utah County, Utah, wholly unproductive and valueless for any beneficial purpose without artificial irrigation; that said lands are of such quality and so situated that they would be greatly benefited and improved in value if water of sufficient quantities to irrigate the same were conducted thereon and applied in the production of agricultural crops, garden vegetables and fruits. That if water were applied on said lands homes could be built upon the same and the population and wealth of said community thereby greatly increased. That there is no water in the vicinity of said uncultivated lands available for use thereon sufficcient for the profitable irrigation thereof, except the waters of said Utah Lake.

XV

That in seasons of normal precipitation the waters in Utah Lake that may be pumped by the plaintiffs, these defendants and others, without interfering with the operation of plaintiffs' pumps as they are now installed, exceed in quantity the amount necessary to satisfy the needs and requirements of plaintiffs and the owners of rights to the use of the waters of the Jordan River, as hereinbefore set forth, prior to the rights of plaintiffs, by 30,000 acre feet or more, and the said 30,000 acre feet, or greater quantity, is, in ordinary years, lost and wasted by evaporation or by flowing unused down the natural channel of the Jordan River, and was, at the time of the filing of said application by defendants to appropriate forty cubic feet of water per second of the waters of said lake, as hereinbefore set forth, unappropriated waters.

XVI

That the Timpanogus Irrigation Company, a corporation, not party to this action, as shown by the proof herein, is the owner of the right to store 8500 acre feet of the waters of the Washington Lake System, Wall Lake System and Tryal Lake System, in Wasatch and Summit Counties, Utah, near the head of the North Fork of the Provo River tributary to said Utah Lake, during the non-irrigation season of each and every year, and to release the same during the irrigation season for the proper irrigation of the lands of its stockholders and others in said counties.

And as conclusions of law from the foregoing facts, the Court finds:

I

That certain persons and corporations, not parties to this action, are the owners of the right to the use of one hundred seventy-six and two hundred sixty-five thousandths (176.265) cubic feet of water per second during the irrigation season of each and every year, and of four (4) cubic feet of water per second during the non-irrigation season of each and every year of the waters of the Jordan River, the names of said parties and the extent of their respective rights to the use of said quantity of water and the manner and place of their use of the same being hereinbefore set forth in paragraph XII of the Findings of Fact herein, and said rights are prior to the rights of the plaintiffs and defendants in this action.

II

That as against the persons and parties owning lands bordering upon Utah Lake, plaintiffs are jointly the owners of the right to raise the waters of said lake to the elevation known as "Compromise Point," and as against the defendants in this action and the Timpanogas Irrigation Company, Plaintiffs are jointly the owners of one hundred eighty-five thousand (185,000) acre feet of water, to be taken and drawn from Utah Lake for irrigation, municipal, culinary and domestic purposes, during the irrigation season of each and every year, to be taken and drawn through the Jordan River in such varying quantities at different times in each year as the necessities of the varying irrigation seasons require, the same being equivalent to a flow of approximately five hundred fifteen (515) cubic feet of water per second, continuously for 180 days; and the plaintiffs, other than Salt Lake City, are the owners of the right to the use of a continuous flow during the non-irrigation season of forty (40) cubic feet of water per second for domestic and culinary purposes.

III

That at the time of the application of these defendants to the State Engineer of the State of Utah to appropriate a quantity of water equal to a flow of forty (40) cubic feet of water per second from April 1st to November 1st in each and every year there was unappropriated water in said lake in excess of said quantity.

IV

That subject to the prior rights of the persons and corporations not parties to this action, hereinbefore referred to, in Paragraph I of these Findings, and subject to the rights of plaintiffs to the use of one hundred eighty-five thousand (185,000) acre feet of the waters flowing and taken from Utah Lake, as hereinbefore set forth in Paragraph 11, and subject to the rights of the Timpanogas Irrigation Company to store and use eighty-five hundred (8500) acre feet of the waters of Washington Lake System, Wall Lake System and Trial Lake System. tributary to said Utah Lake, defendants are the owners of the right to draw and take from the waters of Utah Lake forty (40) cubic feet per second, continuously from the first day of April to the first day of November in each and every year for irrigation, culinary and domestic uses.

V

That this Court should retain jurisdiction of this action, the subject matter thereof, and of the parties thereto, for the purpose of making such orders as may from time to time be necessary to carry into effect the terms and conditions of the decree to be entered herein.

J. E. Booth
JUDGE

Dated at Provo, Utah, this 5th day of June, 1909.

Tab F

CHAPTER IV.

OF INCORPORATIONS FOR GENERAL PURPOSES.

An Act providing for incorporating associations, for mining, manufacturing, commercial and other industrial pursuits.

[*Approved February* 18, 1870.]

Residence of corporators.

(529.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That hereafter, whenever any number of persons, not less than six, one-third of whom being residents of this Territory, are desirous of associating themselves together for establishing and conducting any mining, manufacturing, commercial, or other industrial pursuit, or the construction or operation of wagon roads, irrigating ditches, or the colonization and improvement of lands, or for colleges, seminaries, churches, libraries, or any benevolent, charitable or scientific association, or for any rightful subjects consistent with the constitution of the United States and the laws of this Territory, and who wish to incorporate for that purpose, may, by complying with the provisions of this act, become a body corporate. (1)

Purposes.

(530.) SEC. 2. They shall enter into an agreement in

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(1) As amended Feb. 20, 1874.

Must enter into an agreement, and what it must contain.

writing, signed by each of them, and by at least four of their number acknowledged before the probate judge of the county in which they have established or intend to establish their principal place of business, stating the precinct or city, and stating the name of the association, their names and places of residence written in full, the time of its duration, which shall not in any case be less than three years nor more than twenty-five years, the pursuit or business agreed upon, specifying it in general terms, the place of its general business, the amount of stock each party has subscribed, the amount of each share and the limit of capital stock agreed upon, the number and kind of officers for the association, with their qualifications and term of office and the time and manner of their election, removal and resignation, and whether the private property of the stockholders shall be liable for its obligations or not, with such additional clauses as they deem necessary for the conducting of the business and its future safety and welfare. To this there shall be added the oath or affirmation of four or more of their number, to the effect that they have commenced or it is *bona fide* their intent to commence and carry on the business mentioned in the agreement, and that the affiants verily believe that each party to the agreement has paid, or is able to and will pay the amount of his stock subscribed, provided that said acknowledgment shall not be made before the probate judge until twenty-five per cent. of the stock subscribed by each shareholder shall have been paid in.

Proviso.

Capital stock.

Provided, that where the amount of the capital stock of any corporation which may be formed under the provisions of this act, or of the act to which this is amendatory, consists of the aggregate valuation of property, for the working, development, management, use, sale or exchange, of which such corporation shall be formed, no actual subscription in money to the capital stock of such corporation shall be necessary; but each owner of such property shall be deemed to have subscribed such an amount to the capital stock of such corporation as under the by-laws will represent the fair estimated cash value of so much of said property, the title to which he may, by deed of trust, convey or may have conveyed, or vested in such corporation; such subscription to be deemed to have been paid in upon the execution and delivery to such corporation of such conveyance or deed of trust: *Provided further*, that this sec-

May be part in property.

tion shall not be so construed as to prohibit the stockholders of any corporation from regulating the mode of making subscriptions to its capital stock, and calling in the same by by-laws or express contract: *And provided further*, that where subscriptions to the capital stock of any company are paid in other than money, the fact shall be so stated, and the kind of property, with a description thereof, specified in the articles of agreement. (1)

Must show.

The agreement must be acknowledged.

(531.) SEC. 3. The agreement, with the oath or affirmation, shall, within ten days from its due execution, be deposited with the probate clerk of the county in which the general business is to be carried on, and shall be by him recorded in a book to be prepared for that purpose and kept in his office, the expenses of which recording shall be paid by the association.

How officers to qualify.

(532.) SEC. 4. Before the first or any other officers shall enter upon the duties of their respective offices, they shall take and subscribe an oath of office, and enter into bonds to the acceptance of the probate judge, that they will discharge the duties of such office to the best of their judgment, and that they will not do nor consent to the doing of any matter or thing relating to the business of the association with intent to defraud any stockholder or creditor or the public. And the oath or affirmation and bonds shall be filed in said office and recorded.

Judge of probate to issue a certificate.

(533.) SEC. 5. So soon as the agreement and oath or affirmation and oath of office and bonds are filed and recorded, the clerk of the probate court shall, under the direction of the probate judge, issue under the seal of the court, a certificate to the association, therein stating in general terms the facts, that the agreement and oath or affirmation and oath of office and bonds have been filed in his office, which shall be sufficient to constitute the association a body corporate, with succession as specified in the agreement.

Powers of the corporation.

(534.) SEC. 6. The corporation in its name shall have power to make contracts, to sue and to be sued, to have a seal, which it may alter at pleasure, to buy, use, and sell or dispose of personal property, to buy, use, sell or dispose of all such real estate as shall be necessary for its general business and such as shall be necessary for the collection of its debts or judgments or decrees in its favor; but it shall not

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(1) As amended Feb 20, 1874.

have power to enter into, as a business, the buying and selling of real estate. It may make all such by-laws, rules and regulations, not inconsistent with the laws in force, or which may be in force in this Territory, and not inconsistent with other corporate rights and vested privileges, as may be necessary to carry into effect the object of the association; and such by-laws, rules and regulations may be made in a general meeting of the stockholders or by a board of officers elected by them. It may as hereinafter provided increase its capital stock or dissolve the corporation.

Increase of capital stock.

Corporations may consolidate.

Notice.

(535.) SEC. 7. If more capital than is first subscribed be needed, the stockholders may at any meeting called for that purpose, by a two-thirds vote of all the stockholders, increase the same by the sale of more shares, and thereafter the stock may be increased accordingly; but in no case shall the capital stock exceed the sum of ten millions of dollars. Where two or more corporations organized under this act shall desire to unite and consolidate, it shall be lawful for them so to unite and consolidate: *Provided*, that at a regular meeting of said corporations, two-thirds of the stockholders thereof shall by vote determine to so unite and consolidate: *Provided further*, that notice of the meetings of such several corporations for such purpose shall be called, by notice published in some newspaper published at Salt Lake city for at least thirty days before such meetings shall be held. (1)

Corporation may be dissolved.

(536.) SEC. 8. Any corporation formed under this act, may dissolve and disincorporate itself by its officers presenting to the probate judge of the county in which the principal office of the company is located, a statement setting forth that at a meeting of the stockholders called for that purpose, it was decided by a two-thirds vote of all the stockholders to disincorporate and dissolve the incorporation. Notice of the application shall then be given by the clerk, which notice shall set forth the nature of the application and shall specify the time and place at which it is to be heard, and shall be published in some newspaper having general circulation in the Territory, once a week for one month. At the time or place appointed, or at any other time or place to which it may be postponed by the judge, said judge shall proceed to consider the application, and if satisfied that the corporation has taken the necessary vote to dissolve itself,

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(1) As amended Feb. 16, 1872.

and that all claims against the corporation are discharged, he shall enter an order declaring it dissolved.

If corporation be dissolved its affairs may be adjusted.

(537.) Sec. 9. Whenever the corporation shall be dissolved, if there shall be debts or claims due to it, or debts or obligations against it, or assets, real or personal, not converted into money for distribution, the corporate powers shall be continued for the purpose of collecting the debts or claims due, and paying its debts or obligations and selling and converting its assets into money and distributing the same among the stockholders; and if no sufficient means of effecting the object and intent of this section be provided in the agreement or by-laws, the court shall have power on the application of any person interested, to make all needful rules and orders and judgments necessary to carry the provisions of this section into effect.

Corporation has lien.

(538.) Sec. 10. The corporation shall collect of the stockholders the amount of stock by them subscribed, in such installments and at such times as shall be settled by the agreement or by-laws. It shall have a lien on the amount paid in and the dividends thereon for any balance due for the stock of a delinquent stockholder.

Officers to act until their successors are qualified.

(539.) Sec. 11. The officers, after being fully qualified to act, may continue to act, unless removed for misconduct, until their successors are qualified.

If officers qualify they may continue to act, etc.

(540.) Sec. 12. If, from any cause, the officers shall not be elected at the time provided in the agreement or by-laws, such election may be made at such other time as the officers and directors may appoint. If such appointment be not made within three months, then at the call of any six stockholders.

Corporation to keep correct books.

(541.) Sec. 13. It shall be the duty of the corporation to keep true and correct books of its proceedings and business.

Stock personal property and transferable.

(542.) Sec. 14. The stock shall be deemed personal property, and may be transferred in such manner as may be provided in the agreement or by-laws.

Fraudulent practices punished.

(543.) Sec. 15. If the secretary, clerk, or other person having the charge of keeping the books of the corporation, or any other person whose duty it is to make entries in such books, shall willfully omit to make the proper entries, or shall knowingly and willfully make any false and fictitious entries therein, with intent to deceive or defraud the corporation or any stockholder, creditor or other person, he and his counselors, advisers, aiders and abettors shall be deemed guilty of forgery, and shall be punished as provided by law for the punishment of the crime of forgery. (1)

Same. (544.) SEC. 16. If any officer, director, employe or other person having the charge or management of any money or other property of the corporation, or to whom any such money or other property shall be entrusted for any purpose whatever, shall fraudulently misapply, carry away, secrete, conceal or convert to his own use any such money or other property with intent to defraud such corporation, or any stockholder, creditors or other person, he, his counselors, aiders and abettors shall be deemed guilty of embezzlement, and shall be punished as provided by law for the punishment of embezzlement. (2)

Certificate of clerk. (545.) SEC. 17. It shall be the duty of the clerk, with whom the records in this act mentioned are kept, at the request of any person interested therein, or who needs the same for evidence, on being paid his fees therefor, to give a transcript of such record under the seal of said court, which transcript shall be conclusive evidence of such record, and *prima facie* evidence of the facts therein stated.

Non-user. (546.) SEC. 18. Non-use for two years of the franchise herein given, or non-compliance with any of the provisions of this act, shall be a forfeiture of the privileges shall herein be granted.

Meetings, votes, etc. (547.) SEC. 19. Whenever a meeting of the stockholders, other than stated meetings shall be necessary, notice shall be given in such manner as may be prescribed in the agreement or by-laws. At all meetings each shareholder shall be entitled to one vote for each share of stock which he or she may have in his or her own right, or any, held by him or her in trust for others, as administrator, executor or guardian, and such votes may be given in person or by an authorized agent or proxy.

Liability of Stockholders. (548.) SEC. 20. If the agreement mentioned in section two of this act, provide that the individual property of the stockholders shall be liable for the corporate obligations, then such property shall be deemed and taken to be so liable; if it provide that such individual property shall not be liable, then it shall be deemed and taken to be not liable: *Provided*, that the joint property of the association and the unpaid stock shall be liable for the debts of the association.

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(1) Sec. 81, penal code, C. L. (2174.)
(2) Sec. 91, penal code, C. L. (2121.)

Right to modify or repeal reserved.

(549.) Sec. 21. The governor and Legislative Assembly may hereafter modify or repeal this act; but if it be repealed, or if the franchise of any corporation organized under this act, shall be forfeited, the corporation may continue for the purposes specified in section nine of the act to which this is an amendment. (1)

CHAPTER V.

CHURCH INCORPORATION.

An Ordinance incorporating the Church of Jesus Christ of Latter-day Saints

[*Approved February* 8, 1851.]

Body corporate.

Name and style.

Seal.

(550.) Sec. 1. *Be it ordained by the General Assembly of the State of Deseret:* That all that portion of the inhabitants of said State, which now are, or hereafter may become residents therein, and which are known and distinguished as "The Church of Jesus Christ of Latter-day Saints," are hereby incorporated, constituted, made and declared a body corporate, with perpetual succession, under the original name and style of "The Church of Jesus Christ of Latter-day Saints," as now organized, with full power and authority to sue and be sued; defend and be defended, in all courts of law or equity in this State; to establish, order, and regulate worship; and hold and occupy real and personal estate, and have and use a seal, which they may alter at pleasure.

Powers of trustee in trust and assistants.

(551.) Sec. 2. And be it further ordained that said body or church as a religious society, may, at a general or special

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(1) As amended Feb. 20, 1874.

Section

16-6-112. Correction of technical errors in instruments.

16-6-124.5. Repealed.

ARTICLE 1

CLUBS

(Repealed by Laws 1963, ch. 17, § 93; 1981, ch. 79, § 4; 1985, ch. 175, § 2.)

16-6-1 to 16-6-17. Repealed.

ARTICLE 2

GENERAL PROVISIONS

16-6-18. Short title.

This act shall be known and may be cited as the "Utah Nonprofit Corporation and Co-operative Association Act." 1963

16-6-19. Definitions.

As used in this chapter:

(1) "Articles of incorporation" means the original articles of incorporation and all amendments to them, including any articles of merger

(2) "Bylaws" means the rules adopted for the regulation or management of the affairs of the corporation irrespective of the names by which the rules are designated

(3) "Cooperative association" means a corporation organized or existing under this chapter subject to Section 16-6-108

(4) "Corporation" or "domestic corporation" means a nonprofit corporation subject to the provisions of this chapter, except a foreign corporation.

(5) "Division" means the Division of Corporations and Commercial Code

(6) "Filed" means the division has received and approved as to form a document submitted under the provisions of this chapter, and has marked on the face of the document a stamp or seal indicating the time of day and date of approval, the name of the division, the division director's signature and division seal, or facsimiles of the signature or seal.

(7) "Foreign corporation" means a nonprofit corporation organized under the laws of a state, territory, or country other than Utah

(8) "Governing board" means the group of persons vested with the management of the affairs of the corporation irrespective of the name by which the group is designated.

(9) "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its affairs.

(10) "Member" means one having membership rights in a corporation in accordance with its articles of incorporation or bylaws

(11) "Nonprofit corporation" means a corporation which does not distribute any part of its income to its members, trustees, or officers, and includes a nonprofit cooperative association.

(12) "Trustee" means one of the group of persons on the governing board irrespective of the name by which the person is designated. 1990

16-6-20. Applicability.

(1) The provisions of this act relating to domestic corporations shall apply to:

(a) all corporations organized hereunder;

(b) all nonprofit corporations organized and existing under the laws of this state on the effective date of this act, including all corporations not for pecuniary profit organized under any of the provisions of Chapter 6 of Title 16, Utah Code Annotated 1953, which are repealed by this act; and

(c) mutual irrigation, canal, ditch, reservoir and water companies and water users' associations organized and existing under the laws of this state on the effective date of this act.

(2) The provisions of this act relating to foreign corporations shall apply to:

(a) all foreign nonprofit corporations transacting business in this state for a purpose or purposes for which a corporation might be organized under this act; and

(b) all foreign nonprofit corporations which qualified to do business in this state under the provisions of Chapter 8 of Title 16, Utah Code Annotated 1953, which provisions were repealed by Chapter 28, Laws of Utah 1961

This act shall not apply to corporations sole nor to domestic or foreign corporations governed by the Uniform Agricultural Co-operative Association Act. 1963

16-6-21. Purposes.

Corporations whose object is not pecuniary profit may be organized under this act for any lawful purpose or purposes, including, but without being limited to, any one or more of the following purposes. charitable; benevolent, eleemosynary; educational, civic, patriotic; political; religious, social; fraternal; literary; cultural; athletic; recreational, scientific; agricultural; horticultural; animal husbandry; water development, diversion, storage, distribution or use; professional, commercial, industrial or trade association, co-operative association; and labor union or association, but organizations subject to any of the provisions of the insurance, banking, savings and loan or credit union laws of this state may not be organized under this act. 1963

16-6-22. General powers.

Each nonprofit corporation shall have power

(1) to have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation.

(2) to sue and be sued, complain and defend, in its corporate name.

(3) to have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

(4) to purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated.

(5) to sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.

(6) to lend money to its employees other than its officers and trustees.

(7) to purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partner-

(b) a party to a formal adjudicative proceeding fails to attend or participate in a properly scheduled hearing after receiving proper notice; or

(c) a respondent in a formal adjudicative proceeding fails to file a response under Section 63-46b-6

(2) An order of default shall include a statement of the grounds for default and shall be mailed to all parties

(3) (a) A defaulted party may seek to have the agency set aside the default order, and any order in the adjudicative proceeding issued subsequent to the default order, by following the procedures outlined in the Utah Rules of Civil Procedure

(b) A motion to set aside a default and any subsequent order shall be made to the presiding officer

(c) A defaulted party may seek agency review under Section 63-46b-12, or reconsideration under Section 63-46b-13, only on the decision of the presiding officer on the motion to set aside the default

(4) (a) In an adjudicative proceeding begun by the agency, or in an adjudicative proceeding begun by a party that has other parties besides the party in default, the presiding officer shall, after issuing the order of default, conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the party in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulting party

(b) In an adjudicative proceeding that has no parties other than the agency and the party in default, the presiding officer shall, after issuing the order of default, dismiss the proceeding 1988

63-46b-12. Agency review — Procedure.

(1) (a) If a statute or the agency's rules permit parties to any adjudicative proceeding to seek review of an order by the agency or by a superior agency, the aggrieved party may file a written request for review within 30 days after the issuance of the order with the person or entity designated for that purpose by the statute or rule

(b) The request shall

(i) be signed by the party seeking review

(ii) state the grounds for review and the relief requested,

(iii) state the date upon which it was mailed, and

(iv) be sent by mail to the presiding officer and to each party

(2) Within 15 days of the mailing date of the request for review, or within the time period provided by agency rule, whichever is longer, any party may file a response with the person designated by statute or rule to receive the response. One copy of the response shall be sent by mail to each of the parties and to the presiding officer

(3) If a statute or the agency's rules require review of an order by the agency or a superior agency, the agency or superior agency shall review the order within a reasonable time or within the time required by statute or the agency's rules

(4) To assist in review, the agency or superior agency may by order or rule permit the parties to file briefs or other papers, or to conduct oral argument.

(5) Notice of hearings on review shall be mailed to all parties.

(6) (a) Within a reasonable time after the filing of any response, other filings, or oral argument, or within the time required by statute or applicable rules, the agency or superior agency shall issue a written order on review.

(b) The order on review shall be signed by the agency head or by a person designated by the agency for that purpose and shall be mailed to each party

(c) The order on review shall contain:

(i) a designation of the statute or rule permitting or requiring review;

(ii) a statement of the issues reviewed,

(iii) findings of fact as to each of the issues reviewed,

(iv) conclusions of law as to each of the issues reviewed,

(v) the reasons for the disposition,

(vi) whether the decision of the presiding officer or agency is to be affirmed, reversed, or modified, and whether all or any portion of the adjudicative proceeding is to be remanded,

(vii) a notice of any right of further administrative reconsideration or judicial review available to aggrieved parties; and

(viii) the time limits applicable to any appeal or review 1988

63-46b-13. Agency review — Reconsideration.

(1) (a) Within 20 days after the date that an order is issued for which review by the agency or by a superior agency under Section 63-46b-12 is unavailable, and if the order would otherwise constitute final agency action, any party may file a written request for reconsideration with the agency, stating the specific grounds upon which relief is requested

(b) Unless otherwise provided by statute, the filing of the request is not a prerequisite for seeking judicial review of the order

(2) The request for reconsideration shall be filed with the agency and one copy shall be sent by mail to each party by the person making the request

(3) (a) The agency head, or a person designated for that purpose, shall issue a written order granting the request or denying the request

(b) If the agency head or the person designated for that purpose does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered to be denied 1988

[redacted] Judicial review — Exhaustion of administrative remedies.

(1) A party aggrieved may obtain judicial review of final agency action, except in actions where judicial review is expressly prohibited by statute

(2) A party may seek judicial review only after exhausting all administrative remedies available, except that

(a) a party seeking judicial review need not exhaust administrative remedies if this chapter or any other statute states that exhaustion is not required,

(b) the court may relieve a party seeking judicial review of the requirement to exhaust any or all administrative remedies if:

(i) the administrative remedies are inadequate; or

(ii) exhaustion of remedies would result in irreparable harm disproportionate to the public benefit derived from requiring exhaustion.

(3) (a) A party shall file a petition for judicial review of final agency action within 30 days after the date that the order constituting the final agency action is issued or is considered to have been issued under Subsection 63-46b-13(3)(b).

(b) The petition shall name the agency and all other appropriate parties as respondents and shall meet the form requirements specified in this chapter 1988

63-46b-15. Judicial review — Informal adjudicative proceedings.

(1) (a) The district courts shall have jurisdiction to review by trial de novo all final agency actions resulting from informal adjudicative proceedings, except that the juvenile court shall have jurisdiction over all state agency actions relating to removal or placement decisions regarding children in state custody.

(b) Venue for judicial review of informal adjudicative proceedings shall be as provided in the statute governing the agency or, in the absence of such a venue provision, in the county where the petitioner resides or maintains his principal place of business

(2) (a) The petition for judicial review of informal adjudicative proceedings shall be a complaint governed by the Utah Rules of Civil Procedure and shall include

(i) the name and mailing address of the party seeking judicial review,

(ii) the name and mailing address of the respondent agency;

(iii) the title and date of the final agency action to be reviewed, together with a duplicate copy, summary, or brief description of the agency action,

(iv) identification of the persons who were parties in the informal adjudicative proceedings that led to the agency action;

(v) a copy of the written agency order from the informal proceeding;

(vi) facts demonstrating that the party seeking judicial review is entitled to obtain judicial review.

(vii) a request for relief, specifying the type and extent of relief requested,

(viii) a statement of the reasons why the petitioner is entitled to relief

(b) All additional pleadings and proceedings in the district court are governed by the Utah Rules of Civil Procedure.

(3) (a) The district court, without a jury, shall determine all questions of fact and law and any constitutional issue presented in the pleadings

(b) The Utah Rules of Evidence apply in judicial proceedings under this section. 1990

63-46b-16. Judicial review — Formal adjudicative proceedings.

(1) As provided by statute, the Supreme Court or the Court of Appeals has jurisdiction to review all final agency action resulting from formal adjudicative proceedings.

(2) (a) To seek judicial review of final agency action resulting from formal adjudicative proceedings, the petitioner shall file a petition for review of agency action with the appropriate appellate court in the form required by the appellate rules of the appropriate appellate court.

(b) The appellate rules of the appropriate appellate court shall govern all additional filings and proceedings in the appellate court.

(3) The contents, transmittal, and filing of the agency's record for judicial review of formal adjudicative proceedings are governed by the Utah Rules of Appellate Procedure, except that:

(a) all parties to the review proceedings may stipulate to shorten, summarize, or organize the record;

(b) the appellate court may tax the cost of preparing transcripts and copies for the record:

(i) against a party who unreasonably refuses to stipulate to shorten, summarize, or organize the record; or

(ii) according to any other provision of law.

(4) The appellate court shall grant relief only if, on the basis of the agency's record, it determines that a person seeking judicial review has been substantially prejudiced by any of the following:

(a) the agency action, or the statute or rule on which the agency action is based, is unconstitutional on its face or as applied;

(b) the agency has acted beyond the jurisdiction conferred by any statute;

(c) the agency has not decided all of the issues requiring resolution,

(d) the agency has erroneously interpreted or applied the law;

(e) the agency has engaged in an unlawful procedure or decision-making process, or has failed to follow prescribed procedure;

(f) the persons taking the agency action were illegally constituted as a decision-making body or were subject to disqualification,

(g) the agency action is based upon a determination of fact, made or implied by the agency, that is not supported by substantial evidence when viewed in light of the whole record before the court

(h) the agency action is:

(i) an abuse of the discretion delegated to the agency by statute;

(ii) contrary to a rule of the agency;

(iii) contrary to the agency's prior practice, unless the agency justifies the inconsistency by giving facts and reasons that demonstrate a fair and rational basis for the inconsistency; or

(iv) otherwise arbitrary or capricious. 1988

63-46b-17. Judicial review — Type of relief.

(1) (a) In either the review of informal adjudicative proceedings by the district court or the review of formal adjudicative proceedings by an appellate court, the court may award damages o compensation only to the extent expressly authorized by statute

(b) In granting relief, the court may·

(i) order agency action required by law;

(ii) order the agency to exercise its discretion as required by law;

(iii) set aside or modify agency action;

(iv) enjoin or stay the effective date o agency action; or

(v) remand the matter to the agency fo further proceedings.

(2) Decisions on petitions for judicial review o final agency action are reviewable by a higher court if authorized by statute. 198

73-1-1. Waters declared property of public.

All waters in this state, whether above or under the ground are hereby declared to be the property of the public, subject to all existing rights to the use thereof.
1953

73-1-2. Unit of measurement — Of flow — Of volume.

The standard unit of measurement of the flow of water shall be the discharge of one cubic foot per second of time, which shall be known as a second-foot, and the standard unit of measurement of the volume of water shall be the acre-foot, being the amount of water upon an acre covered one foot deep, equivalent to 43.560 cubic feet.
1953

73-1-3. Beneficial use basis of right to use.

Beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state
1953

73-1-4. Reversion to public by abandonment or failure to use within five years — Extending time.

(1) (a) When an appropriator or his successor in interest abandons or ceases to use water for a period of five years, the right ceases, unless, before the expiration of the five-year period, the appropriator or his successor in interest files a verified application for an extension of time with the state engineer

(b) The extension of time to resume the use of that water shall not exceed five years unless the time is further extended by the state engineer The provisions of this section are applicable whether the unused or abandoned water is permitted to run to waste or is used by others without right.

(2) (a) The state engineer shall furnish an application blank that includes a space for

(i) the name and address of applicant;
(ii) the name of the source from which the right is claimed and the point on that source where the water was last diverted,
(iii) evidence of the validity of the right claimed by reference to application number in the state engineer s office;
(iv) date of court decree and title of case, or the date when the water was first used;
(v) the place, time, and nature of past use;
(vi) the flow of water that has been used in second-feet or the quantity stored in acre-feet;
(vii) the time the water was used each year;
(viii) the extension of time applied for;
(ix) a statement of the reason for the nonuse of the water; and
(x) any other information that the state engineer requires.

(b) Filing the application extends the time during which nonuse may continue until the state engineer issues his order on the application for an extension of time.

(c) Upon receipt of the application, the state engineer shall publish, once each week for three successive weeks, a notice of the application in a newspaper of general circulation in the county in which the source of the water supply is located that shall inform the public of the nature of the right for which the extension is sought and the reasons for the extension.

(d) Within 30 days after the notice is published, any interested person may file a written protest with the state engineer against the granting of the application.

(e) In any proceedings to determine whether or not the application for extension should be approved or rejected, the state engineer shall follow the procedures and requirements of Chapter 46b, Title 63.

(f) After further investigation, the state engineer may allow or reject the application.

(3) (a) Applications for extension shall be granted by the state engineer for periods not exceeding five years each, upon a showing of reasonable cause for such nonuse.

(b) Reasonable causes for nonuse include:

(i) financial crisis;
(ii) industrial depression;
(iii) operation of legal proceedings or other unavoidable cause; and
(iv) the holding of a water right without use by any municipality, metropolitan water district, or other public agency to meet the reasonable future requirements of the public

(4) (a) If the appropriator or his successor in interest fails to apply for an extension of time, or if the state engineer denies the application for extension of time, the appropriator s water right ceases.

(b) When the appropriator's water right ceases, the water reverts to the public and may be reappropriated as provided in this title

(5) (a) Sixty days before the expiration of any extension of time, the state engineer shall notify the applicant by registered mail of the date when the extension period will expire.

(b) Before the date of expiration, the applicant shall either

(i) file a verified statement with the state engineer setting forth the date on which use of the water was resumed, and whatever additional information is required by the state engineer; or
(ii) apply for a further extension of time in which to resume use of the water according *to the procedures and requirements of this* section
1988

73-1-5. Use of water a public use.

The use of water for beneficial purposes, as provided in this title, is hereby declared to be a public use.
1953

73-1-6. Eminent domain — Purposes.

Any person shall have a right of way across and upon public, private and corporate lands, or other rights of way, for the construction, maintenance, repair and use of all necessary reservoirs, dams, water gates, canals, ditches, flumes, tunnels, pipelines and areas for setting up pumps and pumping machinery or other means of securing, storing, replacing and [illegible] culinary, industrial and irrigation purposes or for any necessary public use, or for drainage, upon payment of just compensation therefor, but such right of way shall in all cases be exercised in a manner not unnecessarily to impair the practical use of any other right of way, highway or public or private road, or to injure any public or private property. 1953

73-1-7. Enlargement for joint use of ditch.

When any person desires to convey water for irrigation or any other beneficial purpose and there is a canal or ditch already constructed that can be used or enlarged to convey the required quantity of water, such person shall have the right to use or enlarge such canal or ditch already constructed, by compensating the owner of the canal or ditch to be used or enlarged for the damage caused by such use or enlargement, and by paying an equitable proportion of the maintenance of the canal or ditch jointly used or enlarged; provided, that such enlargement shall be made between the 1st day of October and the 1st day of March, or at any other time that may be agreed upon with the owner of such canal or ditch The additional water turned in shall bear its proportion of loss by evaporation and seepage 1953

73-1-8. Duties of owners of ditches — Safe condition — Bridges.

The owner of any ditch, canal, flume or other watercourse shall maintain the same in repair so as to prevent waste of water or damage to the property of others, and is required, by bridge or otherwise, to keep such ditch, canal, flume or other watercourse in good repair where the same crosses any public road or highway so as to prevent obstruction to travel or damage or overflow on such public road or highway, except where the public maintains or may hereafter elect to maintain devices for that purpose 1953

73-1-9. Contribution between joint owners of ditch or reservoir.

When two or more persons are associated in the use of any dam, canal, reservoir, ditch, lateral, flume or other means for conserving or conveying water for the irrigation of land or for other purposes, each of them shall be liable to the other for the reasonable expenses of maintaining, operating and controlling the same, in proportion to the share in the use or ownership of the water to which he is entitled. 1953

73-1-10. Conveyance of water rights — Deed — Exceptions — Filing and recordation of deed.

Water rights, whether evidenced by decrees, by certificates of appropriation, by diligence claims to the use of surface or underground water or by water users claims filed in general determination proceedings, shall be transferred by deed in substantially the same manner as real estate, except when they are represented by shares of stock in a corporation, in which case water shall not be deemed to be appurtenant to the land, and such deeds shall be recorded in books kept for that purpose in the office of the recorder of the county where the place of diversion of the water from its natural channel is situated and in the county where the water is applied. A certified copy of such deed, or other instrument, transferring such water rights shall be promptly transmitted by the county recorder to the state engineer for filing. Every deed of a water right so recorded shall, from the time of filing the same with the recorder for record, impart notice to all persons of the contents thereof, and subsequent purchasers, mortgagees an lien holders shall be deemed to purchase and tak with notice thereof. 19

[illegible] Appurtenant waters — Use as passing under conveyance.

A right to the use of water appurtenant to land shall pass to the grantee of such land, and, in cases where such right has been exercised in irrigating different parcels of land at different times, such right shall pass to the grantee of any parcel of land on which such right was exercised next preceding the time of the execution of any conveyance thereof; subject, however, in all cases to payment by the grantee in any such conveyance of all amounts unpaid on any assessment then due upon any such right; provided, that any such right to the use of water, or any part thereof, may be reserved by the grantor in any such conveyance by making such reservation in express terms in such conveyance, or it may be separately conveyed. 1961

73-1-12. Failure to record — Effect.

Every deed of a water right which shall not be recorded as provided in this title shall be void as against any subsequent purchaser, in good faith and for a valuable consideration, of the same water right, or any portion thereof, where his own deed shall be first duly recorded. 1953

73-1-13. Corporations — One water company may own stock in another.

Any irrigation or reservoir company incorporated and existing under the laws of this state may purchase or subscribe for the capital stock of any other similar corporation which at the time of such purchase or subscription shall be or is about to be incorporated; provided, that such purchase or subscription shall be made only when permitted by the articles of incorporation, and such corporations are hereby permitted and authorized to amend their articles of incorporation so as to authorize such purchase or subscription 1953

73-1-14. Interfering with waterworks or with apportioning official — Penalty and liability.

Any person, who in any way unlawfully interferes with, injures, destroys or removes any dam, head gate, weir, casing, valve, cap or other appliance for the diversion, apportionment, measurement or regulation of water, or who interferes with any person authorized to apportion water while in the discharging of his duties, is guilty of a misdemeanor, and is also liable in damages to any person injured by such unlawful act. 1953

73-1-15. Obstructing canals or other watercourses — Penalties.

Whenever any person, partnership, company or corporation has a right of way of any established type or title for any canal or other watercourse it shall be unlawful for any person, persons or governmental agencies to place or maintain in place any obstruction, or change of the water flow by fence or otherwise, along or across or in such canal or watercourse, except as where said watercourse inflicts damage to private property, without first receiving written permission for the change and providing gates sufficient for the passage of the owner or owners of such canal or watercourse. That the vested rights in the established canals and watercourse shall be protected against all encroachments. That indemnifying agre

[redacted] Appropriation — Manner of acquiring water rights.

Rights to the use of the unappropriated public waters in this state may be acquired only as provided in this title. No appropriation of water may be made and no rights to the use thereof initiated and no notice of intent to appropriate shall be recognized except application for such appropriation first be made to the state engineer in the manner hereinafter provided, and not otherwise. The appropriation must be for some useful and beneficial purpose, and, as between appropriators, the one first in time shall be first in rights; provided, that when a use designated by an application to appropriate any of the unappropriated waters of the state would materially interfere with a more beneficial use of such water, the application shall be dealt with as provided in Section 73-3-8. No right to the use of water either appropriated or unappropriated can be acquired by adverse use or adverse possession. 1953

[redacted] Application for right to use unappropriated public water — Necessity — Form — Contents — Validation of prior applications by state or United States or officer or agency thereof.

(1) (a) In order to acquire the right to use any unappropriated public water in this state any person who is a citizen of the United States or who has filed his declaration of intention to become a citizen as required by the naturalization laws, or any association of citizens or declarants, or any corporation, or the state of Utah by the directors of the divisions of travel development, *business and economic development*, wildlife resources, and state lands and forestry or the executive director of the Department of Transportation for the use and benefit of the public, or the United States of America shall make an application in writing to the state engineer before commencing the construction, enlargement, extension, or structural alteration of any ditch, canal, well, tunnel, or other distributing works, or performing similar work tending to acquire such rights or appropriation, or enlargement of an existing right or appropriation.

(b) *The application shall be upon a blank to be* furnished by the state engineer and shall set forth:

(i) the name and post office address of the person, corporation, or association making the application;

(ii) the nature of the proposed use for which the appropriation is intended;

(iii) the quantity of water in acre-feet or the flow of water in second-feet to be appropriated;

(iv) the time during which it is to be used each year;

(v) the name of the stream or other source from which the water is to be diverted;

(vi) the place on the stream or source where the water is to be diverted and the nature of the diverting works;

(vii) the dimensions, grade, shape, and nature of the proposed diverting channel; and

(viii) other facts that clearly define the full purpose of the proposed appropriation.

(2) (a) In addition to the information required in Subsection (1)(b), if the proposed use is for irrigation, the application shall show:

(i) the legal subdivisions of the land proposed to be irrigated, with the total acreage thereof; and

(ii) the character of the soil.

(b) In addition to the information required in Subsection (1)(b), if the proposed use is for developing power, the application shall show:

(i) the number, size, and kind of water wheels to be employed and the head under which each wheel is to be operated;

(ii) the amount of power to be produced;

(iii) the purposes for which and the places where it is to be used; and

(iv) the point where the water is to be returned to the natural stream or source.

(c) In addition to the information required in Subsection (1)(b), if the proposed use is for milling or mining, the application shall show:

(i) the name of the mill and its location or the name of the mine and the mining district in which it is situated;

(ii) its nature; and

(iii) the place where the water is to be returned to the natural stream or source.

(d) (i) The point of diversion and point of return of the water shall be designated with reference to the United States land survey corners, mineral monuments, or permanent federal triangulation or traverse monuments, when either the point of diversion or the point of return is situated within six miles of the corners and monuments.

(ii) If the point of diversion or point of return is located in unsurveyed territory, the point may be designated with reference to a permanent, prominent natural object.

(iii) The storage of water by means of a reservoir shall be regarded as a diversion, and the point of diversion in those cases is the point where the longitudinal axis of the dam crosses the center of the stream bed.

(iv) The point where released storage water is taken from the stream shall be designated as the point of rediversion.

(v) The lands to be inundated by any reservoir shall be described as nearly as may be, and by government subdivision if upon surveyed land. The height of the dam, the capacity of the reservoir, and the area of the surface when the reservoir is filled shall be given.

(vi) If the water is to be stored in an underground area or basin, the applicant shall designate, with reference to the nearest United States land survey corner if situated within six miles of it, the point of area of intake, the location of the underground area or basin, and the points of collection.

(e) Applications for the appropriation of water filed prior to the enactment of this title, by the United States of America, or any officer or agency of it, or the state of Utah, or any officer or agency of it, are validated, subject to any action by the state engineer. 1991

[redacted] Permanent or temporary changes in point of diversion or purpose of use.

(1) For purposes of this section:

(a) "Permanent changes" means changes for an indefinite length of time with an intent to relinquish the original point of diversion, place, or purpose of use.

(b) "Temporary changes" means all changes for definitely fixed periods not exceeding one year

(2) (a) Any person entitled to the use of water may make:

(i) permanent or temporary changes in the place of diversion,

(ii) permanent or temporary changes in the place of use; and

(iii) permanent or temporary changes in the purpose of use for which the water was originally appropriated.

(b) No change may be made if it impairs any vested right without just compensation.

(3) Both permanent and temporary changes of point of diversion, place, or purpose of use of water, including water involved in general adjudication or other suits, shall be made in the manner provided in this section

(4) (a) No change may be made unless the change application is approved by the state engineer

(b) Applications shall be made upon forms furnished by the state engineer and shall set forth

(i) the name of the applicant,

(ii) a description of the water right,

(iii) the quantity of water,

(iv) the stream or source,

(v) the point on the stream or source where the water is diverted,

(vi) the point to which it is proposed to change the diversion of the water,

(vii) the place, purpose, and extent of the present use

(viii) the place, purpose, and extent of the proposed use, and

(ix) any other information that the state engineer requires

(5) (a) The state engineer shall follow the same procedures, and the rights and duties of the applicants with respect to applications for permanent changes of point of diversion, place, or purpose of use shall be the same, as provided in this title for applications to appropriate water

(b) The state engineer may, in connection with applications for permanent change involving only a change in point of diversion of 660 feet or less, waive the necessity for publishing a notice of application

(6) (a) The state engineer shall investigate all temporary change applications.

(b) If the state engineer finds that the temporary change will not impair any vested rights of others, he shall issue an order authorizing the change

(c) If the state engineer finds that the change sought might impair vested rights, before authorizing the change, he shall give notice of the application to all persons whose rights might be affected by the change

(d) Before making an investigation or giving notice, the state engineer may require the applicant to deposit a sum of money sufficient to pay the expenses of the investigation and publication of notice.

(7) (a) The state engineer may not reject applications for either permanent or temporary changes for the sole reason that the change would impair the vested rights of others.

(b) If otherwise proper, permanent or temporary changes may be approved as to part of the water involved or upon the condition that conflicting rights are acquired.

(8) (a) Any person holding an approved application for the appropriation of water may either permanently or temporarily change the point of diversion, place, or purpose of use.

(b) No change of an approved application affects the priority of the original application, except that no change of point of diversion, place, or nature of use set forth in an approved application will enlarge the time within which the construction of work is to begin or be completed.

(9) Any person who changes or who attempts to change a point of diversion, place, or purpose of use, either permanently or temporarily, without first applying to the state engineer in the manner provided in this section

(a) obtains no right; and

(b) is guilty of a misdemeanor, each day of the unlawful change constituting a separate offense, separately punishable.

(10) (a) The provisions of this section do not apply to the replacement of an existing well by a new well drilled within a radius of 150 feet from the point of diversion from the existing well

(b) No replacement well may be drilled except after complying with the requirements of Section 73-3-28

(11) (a) The Division of Wildlife Resources may file applications for permanent or temporary changes according to the requirements of this section on

(i) perfected water rights presently owned by the Division of Wildlife Resources;

(ii) perfected water rights purchased by that division through funding provided for that purpose by legislative appropriation, or acquired by lease, agreement, gift, exchange, contribution, or

(iii) appurtenant water rights acquired with the acquisition of real property for other wildlife purposes

(b) (i) Subsection (a) allows changes only be for the limited purpose of providing water for instream flows in natural channels necessary for the preservation or propagation of fish within a designated section of a natural stream channel

(ii) Subsection (11) does not allow enlargement of the water right sought to be changed nor may the change impair any vested water right

(c) In addition to the other requirements of this section, an application filed by the Division of Wildlife Resources shall.

(i) set forth the points on the natural stream between which the necessary instream flows will be provided by the change, and

(ii) include appropriate studies, reports, or other information required by the state engineer that demonstrate the necessity for the instream flows in the specified section of the natural stream, and the projected benefits to the public fishery that will result from the change.

(d) (i) The Division of Wildlife Resources may not acquire title or a long-term interest in a water right for the purposes provided in

Subsection (11)(b) without prior legislative approval.

(ii) After obtaining that approval, the Division of Wildlife Resources may file a request for a permanent change as provided in Subsection (11)(a).

(e) Subsection (11) does not authorize the Division of Wildlife Resources to:

(i) appropriate unappropriated water under Section 73-3-2 for the purpose of providing instream flows; or

(ii) acquire water rights by eminent domain for instream flows or for any other purpose.

(f) Subsection (11) applies only to applications filed on or after April 28, 1986. 1987

[illegible] "Received," "filed" defined.

Whenever in this title the word "received" is used with reference to any paper deposited in the office of the state engineer, it shall be deemed to mean the date when such paper was first deposited in the state engineer's office; and whenever the term "filed" is used, it shall be deemed to mean the date when such paper was acceptably completed in form and substance and filed in said office. 1953

73-3-5. Action by engineer on applications.

On receipt of each application containing the information required by Section 73-3-2, and payment of the filing fee, it shall be the duty of the state engineer to make an endorsement thereon of the date of its receipt, and to make a record of such receipt in a book kept in his office for that purpose. It shall be his duty to examine the application and determine whether any corrections, amendments or changes are required for clarity and if so, see that such changes are made before further processing. All applications which shall comply with the provisions of this chapter and with the regulations of the state engineer shall be filed and recorded in a suitable book kept for that purpose.

The state engineer may issue a temporary receipt to drill a well at any time after the filing of an application to appropriate water therefrom, as provided by this section if all fees be advanced and if in his judgment there is unappropriated water available in the proposed source and there is no likelihood of impairment of existing rights; provided, however, that the issuance of such temporary permits shall not dispense with the publishing of notice and the final approval or rejection of such application by the state engineer, as provided by this chapter.

The state engineer may send the necessary notices and address all correspondence relating to each application to the owner thereof as shown by the state engineer's records, or to his attorney in fact provided a written power of attorney is filed in the state engineer's office. 1959

73-3-5.5. Temporary applications to appropriate water — Approval by engineer — Expiration — Proof of appropriation not required.

(1) The state engineer may issue temporary applications to appropriate water for beneficial purposes.

(2) The provisions of this chapter governing regular applications to appropriate water shall apply to temporary applications with the following exceptions.

(a) (i) The state engineer shall undertake a thorough investigation of the proposed appropriation, and if the temporary application complies with the provisions of Section 73-3-8, may make an order approving the application.

(ii) If the state engineer finds that the appropriation sought might impair other rights, before approving the application, the state engineer shall give notice of the application to all persons whose rights may be affected by the temporary appropriations.

(b) The state engineer may issue a temporary application for a period of time not exceeding one year

(c) (i) The state engineer, in the approval of a temporary application, may make approval subject to whatever conditions and provisions he considers necessary to fully protect prior existing rights.

(ii) If the state engineer determines that it is necessary to have a water commissioner distribute the water under a temporary application for the protection of other vested rights, the state engineer may assess the distribution costs against the holder of the temporary application.

(d) (i) A temporary application does not vest in its holder a permanent vested right to the use of water

(ii) A temporary application automatically expires and is cancelled according to its terms.

(e) Proof of appropriation otherwise required under this chapter is not required for temporary applications 1987

73-3-6. Publication of notice of application — Corrections or amendments of applications.

(1) (a) When an application is filed in compliance with this title, the state engineer shall publish once a week for a period of three successive weeks a notice of the application informing the public of the contents of the application and the proposed plan of development

(b) (i) The state engineer shall publish the notice in a newspaper published within the county near the water source from which the appropriation is to be made.

(ii) If no newspaper is published within the county, the state engineer shall publish the notice in a newspaper having general circulation near the water source from which the appropriation is to be made.

(c) Clerical errors, ambiguities, and mistakes that do not prejudice the rights of others may be corrected by order of the state engineer either before or after the publication of notice.

(2) After publication of notice to water users, the state engineer may authorize amendments or corrections that involve a change of point of diversion, place, or purpose of use of water, only after republication of notice to water users 1987

73-3-7. Protests.

(1) Any person interested may, at any time within 30 days after notice is published, file a protest with the state engineer

(2) The state engineer shall consider the protest and shall approve or reject the application. 1988

73-3-8. Approval or rejection of application — Requirements for approval — Application for specified period of time — Filing of royalty contract for removal of salt or minerals.

[illegible] reasonable and due diligence is shown by the applicant, the state engineer shall approve the extension.

(ii) The approved extension is effective so long as the applicant continues to exercise reasonable diligence in completing the appropriation

(i) The state engineer shall consider the holding of an approved application by any municipality, metropolitan water district, or other public agency to meet the reasonable future requirements of the public to be reasonable and due diligence within the meaning of this act

(j) The state engineer, in acting upon requests for extension of time, may, if he finds unjustified delay or lack of diligence in prosecuting the works to completion, deny the extension or may grant the request in part or upon conditions, including a reduction of the priority of all or part of the application

(2) (a) An application upon which proof has not been submitted shall lapse and have no further force or effect after the expiration of 50 years from the date of its approval

(b) If the works are constructed with which to make beneficial use of the water applied for, the state engineer may, upon showing of that fact grant additional time beyond the 50-year period in which to make proof 1988

73-3-13. Protests — Procedure.

(1) Any other applicant or any user of water from any river system or water source may file a request for agency action with the state engineer alleging that such work is not being diligently prosecuted to completion

(2) Upon receipt of the request for agency action, the state engineer shall give the applicant notice and hold an adjudicative proceeding

(3) If diligence is not shown by the applicant, the state engineer may declare the application and all rights under it forfeited 1987

73-3-14. Judicial review — State engineer as defendant.

(1) (a) Any person aggrieved by an order of the state engineer may obtain judicial review by following the procedures and requirements of Chapter 46b, Title 63

(b) Venue for judicial review of informal adjudicative proceedings shall be in the county in which the stream or water source, or some part of it, is located.

(2) The state engineer shall be joined as a defendant in all suits to review his decisions, but no judgment for costs or expenses of the litigation may be rendered against him. 1987

73-3-15. Dismissal of action for review of informal adjudicative proceedings.

(1) An action to review a decision of the state engineer from an informal adjudicative proceeding may be dismissed upon the application of any of the parties upon the grounds provided in Rule 41 of the Utah Rules of Civil Procedure for the dismissal of actions generally and for failure to prosecute such action with diligence.

(2) (a) For the purpose of this section, failure to prosecute a suit to final judgment within two years after it is filed, or, if an appeal is taken to the Supreme Court within three years after the filing of the suit, constitutes lack of diligence.

(b) A court shall dismiss those suits after ten days' notice by regular mail to the plaintiff. 1987

[illegible] Proof of appropriation or permanent change — Notice — Manner of proof — Statements — Maps, profiles and drawings — Verification — Waiver of filing — Statement in lieu of proof of appropriation or change.

Sixty days before the date set for the proof of appropriation or proof of permanent change to be made the state engineer shall notify the applicant by certified mail when proof of completion of works and application of the water to a beneficial use will be due On or before the date set for completing such proof in accordance with his application the applicant shall file proof to the state engineer, on blanks to be furnished by the state engineer, by a statement descriptive of the works constructed, and of the quantity of water in acre-feet or the flow in second-feet appropriated, and of the method of applying the water to beneficial use, with detailed measurements of water put to beneficial use giving the date the measurements were made and the name of the person making the measurements, provided, however, that on applications heretofore or hereafter filed for appropriation or permanent change of use of water to provide a water supply for state projects constructed pursuant to Chapter 10 Title 73 Utah Code Annotated 1953, and for federal projects constructed by the United States Bureau of Reclamation for the use and benefit of the state any of its agencies, its political subdivisions, public and quasi-municipal corporations, or water users associations of which the state, its agencies, political subdivisions or public and quasi-municipal corporations are stockholders, the proof need show no more than (a) completion of construction of the project works, (b) a description of the major features thereof with appropriate maps, profiles, drawings and reservoir area-capacity curves, (c) a description of the point or points of diversion and rediversion, (d) project operation data, (e) a description by configuration on a map of the place of use of water and a statement of the purpose, and method of use, (f) the project plan for beneficial use of water under such applications and the quantity of water required, and (g) the installation of necessary measuring devices. The chairman of the Utah water and power board shall sign proofs for the state projects and the duly authorized official of the Bureau of Reclamation shall sign proofs for the federal projects specified above.

The proof on all applications shall be sworn to by the applicant or his duly appointed representative and proof engineer and shall be accompanied by maps, profiles (in case of power use only) and drawings made on tracing linen by a reputable registered land surveyor or engineer, and shall show fully and correctly the location of the completed works with reference to a United States land survey corner if within a distance of six miles of a land survey corner, the tie may be to a mineral monument, or to a permanent federal triangulation or traverse monument. If in unsurveyed territory and not within six miles of a mineral or federal triangulation monument, such point may be designated with reference to a permanent prominent natural object. The proof shall also show the nature and extent of the completed works, the natural stream or source from which and the point where the water is diverted and in case of non-consumptive use the point where the water is returned. The place of use shall be shown by legal [illegible] divisions consisting of forty-acre tracts accord[illegible]

United States land surveys on the maps and in the written proof, together with acreage in case of use for irrigation, but when water is used on less than a legal subdivision the description both in the written proof and on the map need not be given by metes and bounds but the maps will show the configuration of the place of use, together with the acreage of irrigated land. The diverting channel on the map need be shown only from the point of diversion to the point where distribution of water begins and may be represented by traverse without metes and bounds. Such other matter must be furnished as will fully and correctly delineate the work done and conform to the general rules and regulations of the state engineer's office consistent with this section. The maps, profiles (where necessary) and drawings shall be verified by oath of the engineer who made them and by the applicant whose work they represent, in such form as the state engineer shall by general rule prescribe.

The state engineer may waive the filing of maps, profiles and drawings if in his opinion the written proof adequately describes the works and the nature and extent of beneficial use.

In those areas in which general determination proceedings are pending, or have been concluded, under Chapter 4 of Title 73 of this Code, the state engineer may petition the district court for permission to waive the requirements of this section and of Section 73-3-17 as to proof of appropriation and proof of change and as to issuance of certificate of appropriation and certificate of change, and to permit each owner of an application to file a verified statement to the effect that he has completed his appropriation or change and elects to file a statement of water users claim in such proposed determination of water rights or any supplement thereto in accordance with and pursuant to Chapter 4 of Title 73, in lieu of proof of appropriation or proof of change. 1973

73-3-17. Certificate of appropriation — Evidence.

Upon it being made to appear to the satisfaction of the state engineer that an appropriation or a permanent change of point of diversion, place or nature of use has been perfected in accordance with the application therefor, and that the water appropriated or affected by the change has been put to a beneficial use, as required by Section 73-3-16, he shall issue a certificate, in duplicate, setting forth the name and post-office address of the person by whom the water is used, the quantity of water in acre-feet or the flow in second-feet appropriated, the purpose for which the water is used, the time during which the water is to be used each year, the name of the stream or source of supply from which the water is diverted, the date of the appropriation or change, and such other matter as will fully and completely define the extent and conditions of actual application of the water to a beneficial use; provided that certificates issued on applications for projects constructed pursuant to Chapter 10, Title 73, Utah Code Annotated 1953, and for the federal projects constructed by the United States Bureau of Reclamation, referred to in Section 73-3-16 of said Code, need show no more than the facts shown in the proof. The certificate shall not extend the rights described in the application. Failure to file proof of appropriation or proof of change of the water on or before the date set therefor shall cause the application to lapse. One copy of such certificate shall be filed in the office of the state engineer and the other shall be delivered to the appropriator or to the person making the change who shall, within thirty days, cause the same to be recorded in the office of the county recorder of the county in which the water is diverted from the natural stream or source. The certificate so issued and filed shall be prima facie evidence of the owner's right to the use of the water in the quantity, for the purpose, at the place, and during the time specified therein, subject to prior rights. 1965

73-3-18. Lapse of application — Notice — Reinstatement — Priorities — Assignment of application — Filing and recording — Constructive notice — Effect of failure to record.

When an application lapses for failure of the applicant to comply with the provisions of this title or the order of the state engineer, notice of such lapsing shall forthwith be given to the applicant by regular mail. Within sixty days after such notice the state engineer may, upon a showing of reasonable cause, reinstate the application with the date of priority changed to the date of reinstatement. The original priority date of a lapsed or forfeited application shall not be reinstated, except upon a showing of fraud or mistake of the state engineer. The priority of an application shall be determined by the date of receiving the written application in the state engineer's office, except as provided in Section 73-3-17 and as herein provided.

Prior to issuance of certificate of appropriation, rights claimed under applications for the appropriation of water may be transferred or assigned by instruments in writing. Such instruments, when acknowledged or proved and certified in the manner provided by law for the acknowledgement or proving of conveyances of real estate, may be filed in the office of the state engineer and shall from time of filing of same in said office impart notice to all persons of the contents thereof. Every assignment of an application which shall not be recorded as herein provided shall be void as against any subsequent assignee in good faith and for valuable consideration of the same application or any portion thereof where his own assignment shall be first duly recorded. 1959

73-3-19. Right of entry on private property — By applicant — Bond — Priority.

Whenever any applicant for the use of water from any stream or water source must necessarily enter upon private property in order to make a survey to secure the required information for making a water filing and is refused by the owner or possessor of such property such right of entry, he may petition the district court for an order granting such right, and after notice and hearing, such court may grant such permission, on security being given to pay all damage caused thereby to the owner of such property. In such case the priority of such application shall date from the filing of such petition with the district court as aforesaid. 1953

73-3-20. Right to divert appropriated waters into natural streams — Requirements — Storage in reservoir — Information required by state engineer — Lapse of application.

(1) Upon application in writing and approval of the state engineer, any appropriated water may, for the purpose of preventing waste and facilitating distribution, be turned from the channel of any stream or any lake or other body of water, into the channel of any natural stream or natural body of water or into a reservoir constructed across the bed of any natural stream, and commingled with its waters, and a like

sults from the negligent or improper operation of any such operation, or any of its appurtenances.

(2) The provisions of Subsection (1) of this section shall not affect or defeat the right of any person to recover damages for any injuries or damage sustained on account of any pollution of, or change in the condition of, the waters of any stream or on account of any overflow of the lands of any person.

(3) Any and all ordinances now or hereafter adopted by any county or municipal corporation in which such operation is located, which makes the operation thereof or its appurtenances a nuisance or providing for an abatement thereof as a nuisance in the circumstances set forth in this section are null and void; provided, however, that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such operation. 1981

78-38-8. "Agricultural operation" defined.

As used in this act, "agricultural operation" means any facility for the production for commercial purposes of crops, livestock, poultry, livestock products or poultry products. 1981

CHAPTER 39

PARTITION

Section

78-39-1. By cotenants of real property.

When several cotenants hold and are in possession of real property as joint tenants or tenants in common, in which one or more of them have an estate of inheritance, or for life or lives, or for years, an action may be brought by one or more of such persons for a partition thereof according to the respective rights of the persons interested therein, and for a sale of such property or a part thereof, if it appears that a partition cannot be made without great prejudice to the owners 1953

78-39-2. Complaint — To set forth interests of all parties.

The interests of all persons in the property, whether such persons are known or unknown, must be set forth in the complaint, specifically and particularly, as far as known to the plaintiff, and if one or more of the parties, or the share or quantity of interest of any of the parties, is unknown to the plaintiff, or is uncertain or contingent, or the ownership of the inheritance depends upon an executory devise, or the remainder is a contingent remainder, so that such parties cannot be named, that fact must be set forth in the complaint. 1953

78-39-3. Parties — Only holders of recorded rights necessary.

No person having a conveyance of, or claiming a lien on, the property, or some part of it, need be made a party to the action, unless such conveyance or lien appears of record. 1953

78-39-4. Lis pendens required.

Immediately after filing the complaint in the dis-

[redacted] **Change in point of diversion, place of use, period of use, r nature of use — Application of act. —** The person entitled to the use of water or owning any land to which water has been made appurtenant either by a decree of the court or under the provisions of the constitution and statutes of this state, may change the point of diversion, period of use, or nature of use, and/or may voluntarily abandon the use of such water in whole or in part on the land which is receiving the benefit of the same and transfer the same to other lands, if the water rights of others are not injured by such change in point of diversion, place of use, period of use, or nature of use, provided; if the right to the use of such water, or the use of the diversion works or irrigation system is represented by shares of stock in a corporation or if such works or system is owned and/or managed by an irrigation district, no change in the point of diversion, place of use, period of use, or nature of use of such water shall be made or allowed without the consent of such corporation or irrigation district. Any permanent or temporary change in period or nature of use in or out-of-state for a quantity greater than fifty (50) cfs or for a storage volume greater than five thousand (5,000) acre-feet shall require the approval of the legislature, except that any temporary change within the state of Idaho for a period of less than three (3) years may be approved by the director without legislative approval.

Any person desiring to make such change of point of diversion, place of use, period of use, or nature of use of water shall make application for change with the department of water resources under the provisions of section 42-222, Idaho Code. After the effective date of this act, no person shall be authorized to change the period of use or nature of use, point of diversion or place of use of water unless he has first applied for and received approval of the department of water resources under the provisions of section 42-222, Idaho Code. [R.S., § 3157; 1899, p. 380, § 11; reen. R.C. & C.L., § 3247; C.S., § 5563; I.C.A., § 41-108; am. 1943, ch. 53, § 1, p. 101; am. 1947, ch. 80, § 1, p. 130; am. 1969, ch. 303, § 1, p. 905; am. 1981, ch. 147, § 1, p. 253; am. 1986, ch. 313, § 1, p. 763.]

Compiler's notes. Section 2 of S.L. 1943, ch. 53 is compiled herein as § 42-222.

Section 2 of S.L. 1969, ch. 303 is compiled herein as § 42-222.

Section 2 of S.L. 1981, ch. 147 is compiled as § 42-221.

Section 2 of S.L. 1986, ch. 313 is compiled as § 42-201.

Section 2 of S.L. 1947, ch. 80 declared an emergency. Approved February 25, 1947.

Section 4 of S.L. 1981, ch. 147 declared an emergency. Approved March 27, 1981.

Sec. to sec. ref. This section is referred to in §§ 42-222, 42-1416A and 50-1805A.

Cited in: Schodde v. Twin Falls Land & Water Co. (1908), 161 Fed. 43; Nettleton v. Higginson, 98 Idaho 87, 558 P.2d 1048 (1977).

ANALYSIS

Abandonment.
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Abandonment.

Such change does not work a forfeiture or is not abandonment of such right. Joyce v. Rubin, 23 Idaho 296, 130 P. 793 (1913) (see also, Joyce v. Murphy Land & Irrigation Co., 35 Idaho 549, 208 P. 241 (1922)).

Water right was not forfeited though abandoned for over five years where applicant for transfer resumed use of water prior to filing petition for transfer. In re Boyer, 73 Idaho 152, 248 P.2d 540 (1952).

Application of 1947 Amendment.

1947 amendment to this section requiring consent of irrigation district to transfer of water right, which did not take effect until February 25, 1947, did not apply to application for transfer filed on October 7, 1946. In re Boyer, 73 Idaho 152, 248 P.2d 540 (1952).

Approval of Department.

Change made without approval of state engineer (department of water resources) did not forfeit the water right. Joyce v. Rubin, 23 Idaho 296, 130 P. 793 (1913).

An appropriator who relies upon statutory appropriation through state engineer's (department of water resources) permit, must apply to state engineer (department) to change place of use. Washington State Sugar Co. v. Goodrich, 27 Idaho 26, 147 P. 1073 (1915).

Change Causing Injury.

Change cannot be made if others are injured thereby. Walker v. McGinness, 8 Idaho 540, 69 P. 1003 (1902); Hard v. Boise City Irrigation & Land Co., 9 Idaho 589, 76 P. 331, 65 L.R.A. 407 (1904); Hill v. Standard Mining Co., 12 Idaho 223, 85 P. 907 (1906); Montpelier Milling Co. v. Montpelier, 19 Idaho 212, 113 P. 741 (1911); Bennett v. Nourse, 22 Idaho 249, 125 P. 1038 (1912); Hall v. Blackman, 22 Idaho 539, 126 P. 1045 (1912); Hall v. Blackman, 22 Idaho 556, 126 P. 1047 (1912); Basinger v. Taylor, 30 Idaho 289, 164 P. 522 (1917).

Prior appropriator of waters of stream will not be permitted to change his point of diversion, if such change will injuriously affect rights of subsequent appropriators as they existed at time such subsequent appropriations were made. Crockett v. Jones, 42 Idaho 652, 249 P. 483 (1926).

No change in point of use of water will be permitted without limitation if enlarged use in time or amount burdens the stream or decreases volume to injury of others. Beecher v. Cassia Creek Irrigation Co., 66 Idaho 1, 154 P.2d 507 (1944).

Change in Nature of Use.

The director of the Department of Water Resources has not been granted the authority to approve an application for a requested change in the nature of the use of water. Beker Indus., Inc. v. Georgetown Irrigation Dist., 101 Idaho 187, 610 P.2d 546 (1980).

Constitutionality.

This section affords the water user due process of law. In re Johnston, 69 Idaho 139, 204 P.2d 434 (1949).

This section does not constitute a delegation of legislative power to a mutual water users' association and does not make an arbitrary discrimination between ordinary water corporations and Carey Act corporations, and the reason for Carey Act corporations not being included in § 42-108 was that the transfer of Carey Act water rights was already covered by chapter 25, title 42 of the Idaho Code. In re Johnston, 69 Idaho 139, 204 P.2d 434 (1949).

Dedication.

The wrongful diversion and use of water by appellant without the knowledge and consent of respondent, a mutual irrigation corporation, could not be made the basis of the dedication provided for in Const., art. 15, § 4. In re Johnston, 69 Idaho 139, 204 P.2d 434 (1949).

Extent of Right.

Right to change place of diversion includes cases in which use of water amounts to its absorption, or is such as to imply notice to subsequent appropriators that such change may reasonably be expected but excludes appropriations to be used at a specific place for purpose of operating machinery and other works, where water is used and then returned to stream practically undiminished in quantity, when such change will damage a subsequent appropriator. Last Chance Mining Co. v. Bunker Hill & S. Mining Co., 49 F. 430 (D. Idaho 1892).

Federal Decree Fixing Priorities.

The court should have followed the federal decree adjudicating interrelated water rights and fixing the priorities as of the same date as in the federal decree to avoid confusion in administering the water rights where a change in points of diversion was sought. Beecher v. Cassia Creek Irrigation Co., 66 Idaho 1, 154 P.2d 507 (1944).

Jurisdiction of District Court.

District court acquired full equitable jurisdiction on appeal from reclamation commission order and had full authority to impose reasonable conditions to avoid injury. Beecher v. Cassia Creek Irrigation Co., 66 Idaho 1, 154 P.2d 507 (1944).

Proof.

Challenge by shareholders in water company to change of diversion point effected by two holders of water rights pursuant to valid water exchange was without basis absent a